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**TRANSCRIPT OF RECORD**

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**Supreme Court of the United States**

**OCTOBER TERM, 1940**

**No. 413**

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**CONTINENTAL OIL COMPANY, PETITIONER,**

**vs.**

**NATIONAL LABOR RELATIONS BOARD**

---

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE TENTH CIRCUIT**

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**PETITION FOR CERTIORARI FILED SEPTEMBER 3, 1940.**

**CERTIORARI GRANTED OCTOBER 22, 1940.**



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# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 413

CONTINENTAL OIL COMPANY, PETITIONER,

vs.

NATIONAL LABOR RELATIONS BOARD

ON WRIT OF HABEAS CORPUS TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE TENTH CIRCUIT

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[fol. a]

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[fol. 1]

**IN UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE TENTH CIRCUIT**

No. 1902

**CONTINENTAL OIL COMPANY, a Corporation, Petitioner,**

**vs.**

**NATIONAL LABOR RELATIONS BOARD, Respondent**

**PETITION OF CONTINENTAL OIL COMPANY TO REVIEW AND SET  
ASIDE AN ORDER OF THE NATIONAL LABOR RELATIONS  
BOARD—Filed May 25, 1939**

**To the United States Circuit Court of Appeals for the  
Tenth Circuit and the Honorable Judges thereof:**

Continental Oil Company, a Delaware corporation, believing itself aggrieved by a final order of the National Labor Relations Board issued on May 9, 1939, in a proceeding against the petitioner appearing upon the docket of said National Labor Relations Board (hereinafter sometimes referred to as the Board), as cases numbered C-627 and R-653 (formerly XXII-C-4 and XXII-R-5), entitled "In the Matter of Continental Oil Company and Oil Workers International Union," respectfully petitions this Honorable Court to review and set aside said order, and in support of its petition respectfully represents and shows:

**The Nature of the Proceedings as to Which Review is  
Sought**

This is a petition to review and set aside a final order of the National Labor Relations Board entered on May 9, 1939, against the Petitioner in the above-entitled and numbered cases before the National Labor Relations Board, this petition being filed pursuant to Section 10, subdivision (f) of the "National Labor Relations Act," Chapter 372, 49 Stat. 449, 29 U. S. C. A. 151-166.

On October 9, 1937, the National Labor Relations Board, acting pursuant to Section 9 (c) of the National Labor Relations Act (sometimes hereinafter referred to as the Act),



[fol. 2] and applicable rules and regulations of the Board, and pursuant to petition previously filed with it by the Oil Workers International Union, ordered an investigation of a question concerning representation of employees of your Petitioner in Salt Creek Field, Natrona County, Wyoming. (Case No. R-653, formerly XXII-B-5.)

On February 11, 1938 (Case No. C-627, formerly XXII-C-4), upon charges and amended charges filed by the Oil Workers International Union the Board, by the Regional Director of the Twenty-second Region, issued its complaint against your Petitioner, and on February 25, 1938, issued its amended complaint against your Petitioner alleging that your Petitioner had engaged in, and was engaging in, unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), (3) and (5) and Section 2 (6) and (7) of the Act. The two cases were consolidated for hearing and are both covered by the May 9, 1939, decision and order of the Board to which this Petition for Review is filed.

The amended complaint alleged, in substance:

1. That your Petitioner had, on January 18, 1937, and at all times thereafter, refused to bargain collectively with the Oil Workers International Union, which Union has been designated as the exclusive representative by a majority of your Petitioner's employees in an appropriate unit at the Salt Creek Oil Field, Natrona County, Wyoming.

2. That your Petitioner had, on August 12, 1935, and at all times thereafter, refused to bargain collectively with said Union which had been designated as the exclusive representative by a majority of your Petitioner's employees in an appropriate unit at the Big Muddy Oil Field, Converse County, Wyoming.

3. That your Petitioner had, on August 12, 1935, and at all times thereafter, refused to bargain collectively with said Union which had been designated as the exclusive representative by a majority of your Petitioner's employees in an appropriate unit at the Glenrock Refinery of your Petitioner in Converse County, Wyoming.

4. That your Petitioner had discharged and refused to reinstate Ernest Jones and F. D. Moore, two Big Muddy Oil Field employees, thereby discouraging membership in the Union.



[fol. 3] 5. That your Petitioner had dominated and interfered with the formation and administration of an independent union in the Salt Creek Field known as Continental Employees Bargaining Association.

6. That your Petitioner had dominated and interfered with the formation and administration of an independent union at the Glenrock Refinery known as the Independent Association of Conoco Glenrock Refinery Employees.

7. That by reason of said acts and by other acts your Petitioner had interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

In addition to the above, in the Salt Creek Field the Union claimed that an appropriate unit for bargaining purposes consisted of the employees of your Petitioner in said field, exclusive of office force and foreman, and also exclusive of employees working in the gas compression plant.

Your Petitioner duly filed its answer to the amended complaint, and on March 3, 1938, to March 17, 1938, inclusive, a hearing was had before a Trial Examiner designated by the Board.

On May 11, 1938, the Trial Examiner filed his Intermediate Report. All the issues were found against your Petitioner by the Trial Examiner in his Intermediate Report.

On May 21, 1938, your Petitioner filed with the Board its exceptions to the rulings of the Trial Examiner and to his Intermediate Report. A brief in behalf of your Petitioner in support of its exceptions to the Intermediate Report was filed with the Board on January 10, 1939, and on January 12, 1939, counsel for your Petitioner orally argued said case before two members of the Board, J. Warren Madden, Chairman, and Edwin S. Smith. No brief was filed in behalf of the Board or in behalf of the Oil Workers International Union, and no oral argument was made in behalf of the Board or in behalf of said Union.

To the adverse "Decision, Order and Direction of Election" entered by the Board in said cases on May 9, 1939, reference to which is here made, your Petitioner, feeling itself aggrieved thereby, has filed this Petition for Review and to set aside said Decision, Order and Direction of Election [fol. 4] pursuant to Section 10, subdivision (f) of the National Labor Relations Act and other applicable sections of said Act.

### The Facts and Statutes upon Which Venue Is Based

Your Petitioner is, and at all times mentioned herein was, a corporation duly organized and existing under and by virtue of the laws of the State of Delaware and duly licensed and authorized to transact business in the State of Wyoming as a foreign corporation. It is, and was at all times mentioned herein engaged in the business in Wyoming and elsewhere of producing, refining and marketing petroleum and petroleum products. In connection with said business it conducted certain crude oil producing operations in what is known as the Salt Creek Field located in Natrona County, State of Wyoming. Likewise it conducted certain crude oil producing operations in what is known as the Big Muddy Oil Field located in Converse County, State of Wyoming. Also it operated an oil refinery located in the Town of Glenrock, Converse County, State of Wyoming. In each of these operations it had a number of employees.

Case No. B-653, formerly XXII-B-5, involves a question of representation of employees of your Petitioner in said Salt Creek Field. Case No. C-627, formerly XXII-C-4, involves alleged unfair labor practices in violation of said National Labor Relations Act claimed to have been carried on and committed by your Petitioner in said Salt Creek Field, in said Big Muddy Field, and in and at said Glenrock Refinery.

Said State of Wyoming, said Salt Creek Oil Field, said Big Muddy Oil Field, said Glenrock Refinery, and the business of your Petitioner transacted in connection therewith are all located in the Tenth Judicial Circuit of the United States, and the unfair labor practices alleged in these cases to have been engaged in by your Petitioner were and are all within the Tenth Judicial Circuit of the United States, and all of the above are within the jurisdiction of this Court.

The Respondent is a public body known as the National Labor Relations Board created pursuant to the Act of Congress of July 5, 1935, Chapter 372, 49 Stat. 449, 29 U. S. C. A. 151-166.

In the above mentioned proceeding before said Respondent involving this Petitioner said Respondent entered a final order under date of May 9, 1939, directed against your Petitioner.

[fol. 5] By reason of the matters hereinabove alleged this Court has jurisdiction of your Petitioner and of the said Respondent and of this matter by virtue of Section 10 (f) of said National Labor Relations Act.



### **Relief Prayed**

Your Petitioner petitions this Honorable Court for a review of the Decision, Order and Direction of Election entered in the above mentioned cases on May 9, 1939, and further respectfully prays:

1. That the Board may be required to certify and deliver to this Honorable Court a transcript of the record in the aforementioned proceedings before said Board, including the pleading and testimony upon which the said Decision, Order and Direction of Election entered by said Board on May 9, 1939, were entered, and the findings and order of the Board.

2. That the proceedings before the Board set forth in said transcript be reviewed by this Honorable Court, and that said Decision, Order and Direction of Election, and each of them, be set aside, vacated and annulled, and that the Respondent be ordered to dismiss its said complaint and amended complaint against your Petitioner.

3. That this Honorable Court enter an order herein staying each and every order of the Board contained in its said Decision, Order and Direction of Election of May 9, 1939, hereinabove referred to, including the direction of election, until the final determination of this review.

4. That this Honorable Court exercise its jurisdiction over the parties and the subject-matter of this Petition, and grant to Petitioner such other and further relief in the premises as the rights and equities of the cause may require.

### **The Points upon Which the Petitioner Intends to Rely**

In this review your Petitioner intends to rely upon the following points:

1. The Board erred in finding and concluding that the exceptions to the Intermediate Report were without merit and in overruling said exceptions, and your Petitioner does hereby allege error with respect to each of said rulings as if each were here specifically referred to and separately set forth.

2. The Board erred in finding and concluding that no [fol. 6] prejudicial errors were committed by the Trial Examiner in rulings on motions and objections to the admis-



sion of evidence and in affirming said rulings, and each of them, and your Petitioner alleges error with respect to each of said rulings as if each were here specifically referred to and separately set forth.

3. The Board erred in its finding and conclusion that the business of your Petitioner involved in this proceeding in said Salt Creek Field constituted commerce, as defined by the National Labor Relations Act and by the laws and Constitution of the United States, and that its operations in said field affected commerce, as defined by said Act.

4. The Board erred in its finding and conclusion that the business of your Petitioner involved in this proceeding in said Big Muddy Oil Field constituted commerce, as defined by the National Labor Relations Act and by the laws and Constitution of the United States, and that its operations in said field affected commerce, as defined by said Act.

5. The Board erred in its finding and conclusion that the business of your Petitioner involved in this proceeding at said Glenrock Refinery constituted commerce, as defined by the National Labor Relations Act and by the laws and Constitution of the United States, and that its operations at said refinery affected commerce, as defined by said Act.

6. None of the alleged findings of fact set forth in the Decision, Order and Direction of Election of the Board support the conclusions of law set forth therein, or the orders of said Board, and none of said alleged findings of fact are a proper basis for any of the conclusions of law or any of the orders set forth therein.

7. The portions of the Board's order, and each of them, requiring Petitioner to take affirmative action are beyond the power of the Board for the reason that the Act vests in the Board the right to order affirmative action without providing any legislative standard, thereby delegating legislative powers to an administrative agency in violation of Article I, Section 1 of the Constitution of the United States.

8. Each and every portion of the Board's Decision, Order and Direction of Election, entitled "Findings of Fact," is not supported by the evidence and is contrary to the record and to the evidence.

[fol. 7] 9. The Board erred in finding that the Oil Workers International Union and the International Association of Oil Field, Gas Well and Refinery Workers of America are one and the same labor organization.

10. The following finding of the Board contained in subdivision 1 (b) of division "A Big Muddy Field" reading:

"We find that on August 12, 1935, the date of its first attempt at collective bargaining after the passage of the Act and thereafter, the Union was the duly designated representative of a majority of the respondent's employees at Big Muddy Field in an appropriate unit and that, pursuant to Section 9 (a) of the Act, was the exclusive representative of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment."

is not supported by the evidence, is contrary to the evidence, and is contrary to law.

11. The following finding of the Board contained in subdivision 1 (c) of division "A Big Muddy Field" reading:

"We find that in August 1935 and thereafter, the respondent refused to bargain collectively with the Union as the representative of its employees in an appropriate unit at Big Muddy Field with respect to rates of pay, wages, hours of employment, and other conditions of employment, and that it thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act."

is not supported by the evidence, is contrary to the evidence, and is contrary to law.

12. The following finding of the Board contained in subdivision 2 of division "A Big Muddy Field" reading:

"... In the present case, the offer of reemployment upon the condition that it would last only so long as his wife was ill was discriminatory. Accordingly the refusal of this offer by Moore did not operate as a voluntary termination of employment."

is not supported by the evidence, is contrary to the evidence, and is contrary to law.



[fol. 8] 13. The following finding of the Board contained in subdivision 2 of division "A Big Muddy Field" reading:

"We find that the respondent, by its transfers of Moore and Jones and the subsequent imposition of a condition upon the reemployment of Moore, discriminated in regard to their hire and tenure of employment and the terms and conditions of their employment, thereby discouraging membership in the Union, and thereby interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act."

is not supported by the evidence, is contrary to the evidence, and is contrary to law.

14. The following finding or statement by the Board contained in subdivision 1 (b) of division "B Glenrock Refinery" reading:

"\* \* \* However, the Employees Council Plan was admittedly sponsored and supported by the respondent, \* \* \*"

is not supported by the evidence, is contrary to the evidence, and is contrary to law.

15. The following finding of the Board contained in subdivision 1 (b) of division "B Glenrock Refinery" reading:

"We find that on August 12, 1935, the date of its first attempt to bargain collectively after the passage of the Act, and thereafter the Union was the duly designated representative of a majority of the respondent's employees at its Glenrock Refinery in an appropriate unit and pursuant to Section 9 (a) of the Act was the exclusive representative of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment."

is not supported by the evidence, is contrary to the evidence, and is contrary to law.

16. The following finding of the Board contained in subdivision 1 (c) of division "B Glenrock Refinery" reading:

"We find that in August, 1935, and thereafter the respondent refused to bargain collectively with the Union as the representative of its employees in an appropriate unit

[fol. 9] at its Glenrock Refinery, with respect to rates of pay, wages, hours of employment, and other conditions of employment, and has thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act."

is not supported by the evidence, is contrary to the evidence, and is contrary to law.

17. The following finding of the Board contained in subdivision 2 of division "B Glenrock Refinery" reading:

"Tillman apprised the representatives of the contents of the letter."

is not supported by the evidence, is contrary to the evidence, and is contrary to law.

18. The following finding of the Board contained in subdivision 2 of division "B Glenrock Refinery" reading:

"\* \* \* The respondent regarded the Glenrock Association as a continuation of the Employees Council plan and assumed a continuity of organization in the Employees Council Plan, the abortive attempt to revise it, and the Glenrock Association."

is not supported by the evidence, is contrary to the evidence, and is contrary to law.

19. The following finding of the Board contained in subdivision 2 of division "B Glenrock Refinery" reading:

"We find that the respondent, by the above-described course of conduct, dominated and interfered with the formation and administration of the Glenrock Association and thereby interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act."

is not supported by the evidence, is contrary to the evidence, and is contrary to law.

20. The following finding of the Board contained in subdivision 1 (a) of division "C Salt Creek Field" reading:

"We find that the production employees of the respondent in the Salt Creek Field, including head roustabouts but



excluding the production foreman, the clerk, and employees engaged in the operation of the gas compression and reduction plant constitute a unit appropriate for the purposes of collective bargaining, and that such unit insures to these employees of the respondent the full benefit of their right to self-organization and to collective bargaining and otherwise effectuates the policies of the Act."

is not supported by the evidence, is contrary to the evidence and is contrary to law in so far as it excludes from the unit appropriate for the purpose of collective bargaining the employees engaged in the operation of the gas compression and reduction plant.

21. The following finding of the Board contained in subdivision 1 (b) of division "C Salt Creek Field" reading:

"In December, 1936, the Union had been designated as the bargaining representative by 15 of the 28 employees in the appropriate unit."

is not supported by the evidence, is contrary to the evidence, and is contrary to law.

22. The following finding of the Board contained in subdivision 2 of division "C Salt Creek Field" reading:

"This petition was thereafter circulated during working hours among the employees at Salt Creek Field and in at least one instance an employee was taken from his work with the approval of his supervisor in order to sign it. \* \* \*"

is not supported by the evidence, is contrary to the evidence, and is contrary to law.

23. The following finding of the Board contained in subdivision 2 of division "C Salt Creek Field" reading:

"Despite the abortive nature of the Salt Creek Independent we believe that the respondent was guilty of unfair labor practices with respect to it. An employer may not under the guise of advice or counsel, render assistance or aid in the formation of an organization whose purpose is that of collective bargaining with the employer. The taint of employer assistance in the process of formation will prevent the operation of such an organization as a labor organization free from employer influence. The policy of an em-

ployer in these matters must be strictly one of 'hands off.' [fol. 11] In contrast, Shannon's policy was one of active assistance, aid, and encouragement.

"We find that the respondent by its above-described activities dominated and interfered with the formation of a labor organization and thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act."

is not supported by the evidence, is contrary to the evidence, and is contrary to law.

24. The following finding of the Board contained in subdivision IV, captioned, "The effect of the unfair labor practice upon commerce," reading:

"The activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce."

is not supported by the evidence, is contrary to the evidence, and is contrary to law.

25. The ultimate findings of the Board hereinabove quoted are not supported by and are contrary to the preliminary findings in said Decision, Order and Direction of Election and are contrary to law.

26. The preliminary findings upon which the ultimate findings of the Board hereinabove quoted are based are not supported by and are contrary to the evidence and to law.

27. The findings of the Board are unlawfully based upon matters found to have occurred prior to the adoption of the National Labor Relations Act.

28. The findings of the Board are unlawfully based upon matters found to have occurred prior to the time the National Labor Relations Act was sustained by the United States Supreme Court.

29. The findings of the Board are not based upon a fair, impartial and complete statement as to the evidence in the case.



[fol. 12] 30. All that portion of the Decision, Order and Direction of Election captioned, "Findings of Fact" is not supported by the evidence and is contrary to the record and the evidence.

31. Neither the Board nor any member thereof was personally present at the taking of the testimony or saw or heard testify any of the witnesses called at said hearing.

Upon information and belief—neither the Board nor any member thereof read the testimony of the witnesses who testified at the hearing or read or inspected the exhibits received in evidence or judicially weighed or appraised the evidence received at said hearing; the Decision and Order of the Board is in substantially the form in which it was prepared by subordinates of the Board and not by the Board, or any members thereof; the Board referred to certain subordinates of the Board unknown to Petitioner the evidence received at said hearing for the purpose of judicially weighing the evidence and formulating the proposed findings of fact thereon; thereafter said subordinates prepared said proposed findings of fact, conclusions of fact and law and terms of an order, and thereafter neither the Board nor any member thereof read any fair, impartial and complete condensation or analysis of the evidence received at said hearing, but on the contrary the Board, in making its findings of fact, conclusions of fact and law and order, relied wholly or in part upon the proposed findings of fact, conclusions of fact and law and the order prepared by its subordinates.

The record in this case consists of more than 1900 typewritten pages of testimony, in addition to several hundred exhibits. Your Petitioner requested the opportunity to make an oral argument before the Board in support of its exceptions to the Intermediate Report and asked for two to three hours within which to make such argument. The Board allowed but 45 minutes for such oral argument, which was a totally inadequate time to present such argument. At such oral argument two members of the Board only were present; namely, J. Warren Madden and Edwin S. Smith. The third member of the Board, Donald Wakefield Smith, was not present at such oral argument, and upon information and belief took no part in the consideration or determination of this case, except to cause his name to be signed to said final order of May 9, 1939.

[fol. 13] 32. All that portion of the Decision, Order and Direction of Election consisting of Subdivision V and captioned, "The Remedy" consists of conclusions, recitals and argument, and does not consist of any proper findings of fact or orders, and has no proper place in said Decision, Order and Direction of Election.

33. That portion of subdivision V of said Decision, Order and Direction of Election under the caption, "The Remedy," reading:

"\* \* \* This decrease, however, is directly attributable to the respondent's unfair labor practices in refusing to recognize and deal with the Union, and at the Glenrock Refinery, to the additional factor of the respondent's support and encouragement of the Employees Council Plan and its continuation, the Glenrock Association."

is not supported by the evidence, is contrary to the evidence and is contrary to law.

34. That portion of subdivision V of said Decision, Order and Direction of Election under the caption, "The Remedy" reading:

"\* \* \* We shall, therefore base our order upon the majority obtaining upon the date of the refusal to bargain and require the respondent to bargain with the Union upon request as the representatives of its employees in the appropriate unit at Big Muddy Field and the Glenrock Refinery."

is not supported by the evidence, is contrary to the evidence and is contrary to law.

35. That portion of subdivision V of said Decision, Order and Direction of Election under the caption, "The Remedy" reading:

"\* \* \* The record discloses that the refusal of the respondent to bargain with the Union was not based upon its belief that the Union did not represent a majority of its employees but was a reiteration of the position it had adopted toward the Union at both Big Muddy Field and the Glenrock Refinery."

is not supported by the evidence, is contrary to the evidence and is contrary to law.



[fol. 14] 36. The following finding of the Board contained in subdivision VI captioned: "The Question Concerning Representation" reading:

"We find that a question has arisen concerning representation of employees of the respondent at Salt Creek Field."

is not supported by the evidence, is contrary to the evidence and is contrary to law.

37. Each and every finding in subdivision VII of the Decision, Order and Direction of Election captioned, "The Effect of the Question Concerning Representation Upon Commerce" is not supported by the evidence, is contrary to the evidence and is contrary to law.

38. That portion of subdivision VIII of the Decision, Order and Direction of Election captioned, "The Determination of Representatives" reading: "Accordingly the name of the Salt Creek Association will not appear upon the ballot," is not supported or justified by the evidence, is contrary to the evidence and is contrary to law.

39. The Board erred in making conclusion of law No. 3 in its "Conclusions of Law."

40. The Board erred in making conclusion of law No. 4 in its "Conclusions of Law."

41. The Board erred in making conclusion of law No. 6 in its "Conclusions of Law."

42. The Board erred in making conclusion of law No. 7 in its "Conclusions of Law."

43. The Board erred in making conclusion of law No. 8 in its "Conclusions of Law."

44. The Board erred in making conclusion of law No. 9 in its "Conclusions of Law."

45. The Board erred in making conclusion of law No. 10 in its "Conclusions of Law."

46. The Board erred in making conclusion of law No. 11 in its "Conclusions of Law."

47. The Board erred in making conclusion of law No. 12 in its "Conclusions of Law."

[fol. 15] 48. The Board erred in making conclusion of law No. 13 in its "Conclusions of Law."

49. The Board erred in making conclusion of law No. 14 in its "Conclusions of Law."

50. The Board erred in making conclusion of law No. 15 in its "Conclusions of Law."

51. The Board erred in the issuance of its order as a whole, upon the ground that the findings of fact and conclusions of law set forth in the decision of the Board are not a basis for said order and do not justify or substantiate the issuance of said order, or any part thereof.

52. The Board erred in ordering Petitioner to cease and desist from:

"(a) Refusing to bargain collectively with Oil Workers International Union as the exclusive representative of all the employees of the respondent at Big Muddy Field, excluding the production foreman and clerical employees but including head roustabouts, in respect to rates of pay, wages, hours of employment, and other conditions of employment;"

53. The Board erred in ordering Petitioner to cease and desist from:

"(b) Refusing to bargain collectively with Oil Workers International Union as the exclusive representative of the production and maintenance employees of the respondent at its Glenrock Refinery, exclusive of supervisory and clerical employees, in respect to rates of pay, wages, hours of employment, and other conditions of employment;"

54. The Board erred in ordering Petitioner to cease and desist from:

"(c) Dominating or interfering with the administration of Independent Association of Conoco Glenrock Refinery Employees, or with the formation of Continental Employees Bargaining Association, or with the formation or administration of any other labor organization of its employees, and from contributing support to said Associations or to any other organization of its employees;"

[fol. 16] 55. The Board erred in ordering Petitioner to cease and desist from:



"(d) Discouraging membership in Oil Workers International Union or any other labor organization of its employees by transferring, discharging, or refusing to re-employ any of its employees, or in any other manner discriminating in regard to their hire or tenure of employment, or any term or condition of their employment;"

56. The Board erred in ordering Petitioner to cease and desist from:

"(e) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid and protection as guaranteed in Section 7 of the Act."

57. The Board erred in finding that any of the affirmative action ordered by said Board will effectuate the policies of the Act.

58. The Board erred in ordering Petitioner to take the following affirmative action:

"(a) Upon request bargain collectively with Oil Workers International Union as the exclusive representative of all the employees of the respondent at Big Muddy Field, excluding the production foreman and clerical employees, in respect to rates of pay, wages, hours of employment, and other conditions of employment;"

59. The Board erred in ordering Petitioner to take the following affirmative action:

"(b) Upon request bargain collectively with Oil Workers International Union as the exclusive representative of the production and maintenance employees of the respondent at its Glenrock Refinery, exclusive of supervisory and clerical employees in respect to rates of pay, wages, hours of employment, and other conditions of employment;"

60. The Board erred in ordering Petitioner to take the following affirmative action:

[fol. 17] "(c) In the event that Oil Workers International Union is selected in the election hereinafter directed as the

representative of the employees in the appropriate unit at Salt Creek Field and is thereafter certified by this Board as the exclusive representative of such employees then, upon request, bargain collectively with Oil Workers International Union as the exclusive representative of the production employees of the respondent at Salt Creek Field, including head roustabouts but excluding the production foreman, the clerk, and employees engaged in the operation of the gas compression and reduction plant, in respect to rates of pay, wages, hours of employment, and other conditions of employment;"

61. The Board erred in ordering Petitioner to take the following affirmative action:

"(d) Withdraw all recognition from Independent Association of Conoco Glenrock Refinery Employees as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, hours of employment, and other conditions of employment, and completely disestablish Independent Association of Conoco Glenrock Refinery Employees as such representative;"

62. The Board erred in ordering Petitioner to take the following affirmative action:

"(e) Withdraw all recognition from Continental Employees Bargaining Association as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, hours of employment, and other conditions of employment;"

63. The Board erred in ordering Petitioner to take the following affirmative action:

"(f) Offer to Ernest Jones and F. D. Moore immediate and full reinstatement to the positions formerly held by them at Big Muddy Field or positions substantially equivalent thereto at said Field, without prejudice to their seniority, insurance, or other rights and privileges;"

64. The Board erred in ordering Petitioner to take the following affirmative action:

[fol. 18] "(g) Make whole Ernest Jones and F. D. Moore for any loss of pay or other pecuniary loss they may have



suffered by reason of the respondent's acts by payment to each of them of a sum of money equal to that which he would normally have earned as wages during the period from the date of the termination of his employment to the date of the respondent's offer of reinstatement, less his net earnings during that period, deducting, however, from the amount otherwise due to each employee monies received by said employee during said period for work performed upon Federal, State, county, municipal, or other work-relief projects and pay over the amounts so deducted to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work-relief projects;”

65. The Board erred in ordering Petitioner to take the following affirmative action:

“(h) Procure for F. D. Moore the restoration of insurance rights, which he lost upon the termination of his employment;”

66. The Board erred in ordering Petitioner to take the following affirmative action:

“(i) Post immediately in conspicuous places throughout the plants involved and keep posted for at least sixty (60) consecutive days, notices stating (1) that the respondent will cease and desist as aforesaid; (2) that the respondent will upon request bargain collectively as provided in 2 (a), (b), and (c) above; (3) that the respondent withdraws all recognition of Independent Association of Conoco Glenrock Refinery Employees as a representative of any of its employees and completely disestablishes it as such representative; (4) that the respondent withdraw all recognition of Continental Employees Bargaining Association as a representative of any of its employees;”

67. The Board erred in ordering Petitioner to take the following affirmative action:

“(j) Notify the Regional Director for the Twenty-second Region in writing within ten (10) days from the date of this [fol. 19] Order what steps the respondent has taken to comply therewith.”

68. The Board erred in failing to find that the Petitioner had not engaged, and was not engaging, in any unfair labor practices defined in the National Labor Relations Act.

69. The Board erred in failing to dismiss the complaint and the amended complaint.

70. The Board erred in that part of its Decision, Order and Direction of Election captioned, "Direction of Election" in ordering an election among the production employees of Continental Oil Company at Salt Creek Field.

71. The Board erred, if any such direction of election is proper, in ordering that the employees of Petitioner engaged in the operation of the gas compression and reduction plant be excluded from the employees entitled to vote at such election.

72. The Board erred, if any such election is proper, in limiting the question to be voted upon to a determination as to whether or not the employees desired to be represented by the Oil Workers International Union for the purpose of collective bargaining.

73. The Board erred, if any such election is proper, in not permitting the employees of Petitioner in Salt Creek Field to vote for the Continental Employees Bargaining Association for the purpose of collective bargaining.

Respectfully submitted, Continental Oil Company,  
by James J. Cosgrove, % Continental Oil Company,  
Ponca City, Oklahoma; John R. Moran, %  
Continental Oil Company, Houston, Texas; John  
P. Akolt, 1300 Telephone Building, Denver, Colorado,  
Its Attorneys.

Smith, Brock, Akolt & Campbell, 1300 Telephone Building,  
Denver, Colorado, of Counsel.

[fol. 20] *Duly sworn to by John P. Akolt. Jurat omitted  
in printing.*

#### IN UNITED STATES CIRCUIT COURT OF APPEALS

ANSWER OF THE NATIONAL LABOR RELATIONS BOARD TO PETITION FOR REVIEW AND REQUEST FOR THE ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.—  
Filed July 10, 1939

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Tenth Circuit:

Comes now the National Labor Relations Board and, pursuant to the National Labor Relations Act (49 Stat. 449, C.



372, 29 U. S. C. sec. 151, et seq.), files this answer and request for enforcement of its order heretofore issued against Continental Oil Company, the petitioner herein:

1. With respect to the allegations contained in the unnumbered paragraphs of the petition under the heading "The Nature of the Proceedings as To Which Review Is Sought," the Board, answering, prays reference to the certified transcript of the entire record in the proceedings before the Board, filed herewith, for a full, exact and complete statement of all the proceedings had in this case and of the pleadings, testimony and evidence, findings of fact, conclusions of law, and order, and direction of election of the Board.

[fol. 21] 2. The Board admits each and every allegation contained in the unnumbered paragraphs of the petition under the heading "The Facts and Statutes Upon Which Venue Is Based."

3. The Board denies the allegations contained in paragraphs 1 to 30, and paragraphs 32 to 73, inclusive, of the petition, said numbered paragraphs and the other numbered paragraph of the petition hereinafter referred to in this answer being contained in the petition under the heading "The Points Upon Which the Petitioner Intends to Rely." Further answering, the Board avers that the proceedings had before it, the findings of fact, conclusions of law, and order, and direction of election were and are in all respects valid and proper under the National Labor Relations Act and the Constitution of the United States.

4. The Board neither admits nor denies the allegations contained in paragraph 31 of the petition for the reasons that said allegations are wholly incompetent, irrelevant, and immaterial to the issues before this Court, that they constitute a completely unfounded and impertinent effort to impugn the character of the Board and its agents, that they relate to the mental processes of the Board which processes are beyond the scope of judicial inquiry, and that they concern matters of official regularity into which upon the record in this case this Court will not inquire. Further answering, the Board avers that in addition to oral argument before the Board, the petitioner through its attorneys was permitted to file, and did file, a brief in support of its exceptions to the Intermediate Report; that the petitioner

was accorded a full and fair hearing in all respects; and that the findings of fact, conclusions of law, and order, and direction of election herein are valid and proper in their entirety under the National Labor Relations Act and the Constitution of the United States.

Wherefore, the Board respectfully prays this Honorable Court that said petition be denied in so far as it prays that the order of the Board be set aside, vacated and annulled and in so far as it prays that said order be stayed until final determination of this review; and that the prayer of the petitioner for an order staying until final determination of this review the "Direction of Election" issued by the Board on May 9, 1939, be dismissed for want of jurisdiction in this Court, or in the alternative denied, for the reasons set forth in the "Opposition of National Labor Relations [fol. 22] Board to Petitioner's Prayer for a Stay of the Board's Direction of Election," dated May 9, 1939, and heretofore filed with this Court.

Further Answering, the Board, pursuant to Sections 10 (e) and 10 (f) of the National Labor Relations Act, respectfully requests this Honorable Court for the enforcement of the order issued by the Board on May 9, 1939, in the proceedings instituted by it against the petitioner, Continental Oil Company, said proceedings being designated on the records of the Board as Cases Nos. C-627 and R-653, the title thereof being "In the Matter of Continental Oil Company and Oil Workers International Union."

In support of this request for enforcement of its said order, the Board respectfully alleges as follows:

(a) Petitioner, a Delaware corporation, is engaged in business in the State of Wyoming, within this judicial circuit. By reason thereof, this Court has jurisdiction of the petition to review herein and of this request for enforcement by virtue of Sections 10 (e) and 10 (f) of the National Labor Relations Act.

(b) Upon all proceedings had in said matter before the Board, as more fully shown by the certified transcript of the entire record thereof, filed herewith, to which reference is hereby made, and including, without limitation, complaints, amendments thereto, answers, hearing for the purpose of taking testimony and receiving other evidence,



intermediate report and exceptions filed thereto, and written and oral argument before the Board, the Board, on May 9, 1939, made its decision, duly stated its findings of fact and conclusions of law and issued the following order, directed to the petitioner, its officers, agents, successors and assigns:

### Order

Upon the basis of the above findings of fact and conclusions of law and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Continental Oil Company, Ponca City, Oklahoma, and its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Oil Workers International Union as the exclusive representative of all [fol. 23] the employees of the respondent at Big Muddy Field, excluding the production foreman and clerical employees but including head roustabouts, in respect to rates of pay, wages, hours of employment, and other conditions of employment.

(b) Refusing to bargain collectively with Oil Workers International Union as the exclusive representative of the production and maintenance employees of the respondent at its Glenrock Refinery, exclusive of supervisory and clerical employees, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(c) Dominating or interfering with the administration of Independent Association of Conoco Glenrock Refinery Employees, or with the formation of Continental Employees Bargaining Association, or with the formation or administration of any other labor organization of its employees, and from contributing support to said Associations or to any other organization of its employees;

(d) Discouraging membership in Oil Workers International Union or any other labor organization of its employees by transferring, discharging, or refusing to re-employ any of its employees, or in any other manner discriminating in regard to their hire or tenure of employment, or any term or condition of their employment;

(e) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-

organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid and protection as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request bargain collectively with Oil Workers International Union as the exclusive representative of all the employees of the respondent at Big Muddy Field, excluding the production foreman and clerical employees, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Upon request bargain collectively with Oil Workers International Union as the exclusive representative of the [fol. 24] production and maintenance employees of the respondent at its Glenrock Refinery, exclusive of supervisory and clerical employees in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(c) In the event that Oil Workers International Union is selected in the election hereinafter directed as the representative of the employees in the appropriate unit at Salt Creek Field and is thereafter certified by this Board as the exclusive representative of such employees, then, upon request, bargain collectively with Oil Workers International Union as the exclusive representative of the production employees of the respondent at Salt Creek Field, including head roustabouts but excluding the production foreman, the clerk, and employees engaged in the operation of the gas compression and reduction plant, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(d) Withdraw all recognition from Independent Association of Conoco Glenrock Refinery Employees as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, hours of employment, and other conditions of employment, and completely disestablish Independent Association of Conoco Glenrock Refinery Employees as such representatives;

(e) Withdraw all recognition from Continental Employees Bargaining Association as the representative of



any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, hours of employment, and other conditions of employment;

(f) Offer to Ernest Jones and F. D. Moore immediate and full reinstatement to the positions formerly held by them at Big Muddy Field or positions substantially equivalent thereto at said field, without prejudice to their seniority, insurance, or other rights and privileges;

(g) Make whole Ernest Jones and F. D. Moore for any loss of pay or other pecuniary loss they may have suffered by reason of the respondent's acts by payment to each of them of a sum of money equal to that which he would normally have earned as wages during the period from the date of the termination of his employment to the date of the respondent's offer of reinstatement, less his net earnings during that period, deducting, however, from the amount otherwise due to each employee monies received [fol. 25] by said employee during said period for work performed upon Federal, State, county, municipal, or other work relief projects and pay over the amounts so deducted to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work relief projects;

(h) Procure for F. D. Moore the restoration of insurance rights, which he lost upon the termination of his employment;

(i) Post immediately in conspicuous places throughout the plants involved and keep posted for at least sixty (60) consecutive days, notices stating (1) that the respondent will cease and desist as aforesaid; (2) that the respondent will upon request bargain collectively as provided in 2 (a), (b), and (c) above; (3) that the respondent withdraws all recognition of Independent Association of Conoco Glenrock Refinery Employees as a representative of any of its employees and completely disestablishes it as such representative; (4) that the respondent withdraws all recognition of Continental Employees Bargaining Association as a representative of any of its employees;

(j) Notify the Regional Director for the Twenty-second Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply therewith.

And it is further ordered that the complaint be and it hereby is dismissed in so far as it alleges that the respondent by its refusal to bargain with the Union as the exclusive bargaining representative of its employees in an appropriate unit at Salt Creek Field, has engaged in unfair labor practices within the meaning of Section 8 (5) of the Act.

(c) Thereafter, on May 9, 1939, the Board's decision and order were duly served upon petitioner by sending copies thereof postpaid, bearing government frank, by registered mail, to its attorneys, John R. Moran in Denver, Colorado, John P. Akolt in Denver, Colorado, and James J. Cosgrove in Ponca City, Oklahoma.

(d) Following an investigation by the Board pursuant to Section 9 (c) of the National Labor Relations Act, and upon all proceedings had in such investigation as more fully shown by the certified transcript of the entire record [fol. 26] thereof, filed herewith, to which reference is hereby made, and including, without limitation, petition, notice of hearing, hearing for the purpose of taking testimony and receiving other evidence, intermediate report, direction of election, and election held pursuant thereto, the Board, on June 7, 1939, duly certified that Oil Workers International Union had been selected by a majority of the production employees of Continental Oil Company at Salt Creek Field, including head roustabouts, but excluding the production foreman, the clerk, and employees engaged in the operation of the gas compression and reduction plant, as their representative for the purposes of collective bargaining, and that pursuant to Section 9 (a) of the National Labor Relations Act, Oil Workers International Union was the exclusive representative of all such employees for the purposes of collective bargaining in respect to wages, rates of pay, hours of employment, and other conditions of employment.

(e) Thereafter, on June 7, 1939, the Board's said certification of representatives was duly served upon petitioner by sending copies thereof postpaid, bearing government frank, by registered mail, to its attorneys, John R. Moran in Denver, Colorado, John P. Akolt in Denver, Colorado, and James J. Cosgrove in Ponca City, Oklahoma.

(f) That by reason of said certification of representatives the petitioner is now required, pursuant to paragraph 2 (c) of the order of the Board, dated May 9, 1939, upon request



to bargain collectively with Oil Workers International Union as the exclusive representative of the production employees of the petitioner at Salt Creek Field, including head roustabouts, but excluding the production foreman, the clerk, and employees engaged in the operation of the gas compression and reduction plant, in respect to rates of pay, wages, hours of employment and other conditions of employment.

(g) Pursuant to Sections 10 (e) and 10 (f), and Section 9 (d) of the National Labor Relations Act, the Board is certifying and filing with this Court herewith a transcript of the entire record of the proceedings before the Board, including the pleadings, testimony and evidence, findings of fact, conclusions of law, order of the Board, certification of representatives and record of the investigation upon which such certification was based.

[fol. 27-35] Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this answer and request for enforcement and transcript to be served upon petitioner, that this Court take jurisdiction of the proceedings in Cases Nos. C-627 and R-653 and of the questions determined therein, and make and enter upon the pleadings, testimony and evidence, and proceedings set forth in the transcript and upon the order made thereon, set forth in paragraph (b) hereof, and upon the certification of representatives set forth in paragraph (d) hereof, a decree denying in whole the petition to set aside, vacate and annul the order of the Board and enforcing in whole the order of the Board and requiring petitioner and its officers, agents, successors, and assigns to comply therewith.

National Labor Relations Board, By Charles Fahy,  
General Counsel.

Dated at Washington, D. C., this 6th day of July, 1939.

*Duly sworn to by Charles Fahy. Jurat omitted in printing.*

[File endorsement omitted.]

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[fol. 36] BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of CONTINENTAL OIL COMPANY and OIL WORKERS INTERNATIONAL UNION

Cases Nos. C-627 and R-653—May 9, 1939

Oil Production and Refining Industry—Interference, Restraint, and Coercion:—Company-Dominated Union: formation, upon suggestion of employer; recognition by employer without proof of majority; employer assistance in preparation for formation of labor organization; disestablished, as agency for collective bargaining—Discrimination: transfer of two leading union employees on eve of extension of hours of work which had been subject of union negotiation—Unit Appropriate for Collective Bargaining: employees exclusive of production foreman and clerical employees, but including head roustabouts, no controversy as to; production and maintenance exclusive of supervisory and clerical employees, no controversy as to—Representatives: proof of choice: petition designating representatives as—Collective Bargaining: willingness to meet with union, but refusal to enter negotiations for a definite agreement; refusal to grant exclusive recognition; employer ordered to bargain despite subsequent loss of majority due to unfair labor practices; charges of refusal to bargain dismissed in one case upon finding that union represented less than majority—Reinstatement: ordered—Back Pay: awarded together with restoration of insurance rights—Investigation of Representatives; controversy concerning representation of employees; employer's refusal to recognize union—Unit Appropriate for Collective Bargaining: extent of organization; unit limited to employees in field excluding employees in operation of gas plant—Election Ordered.

Mr. David C. Shaw, for the Board.

Mr. John R. Moran, and Mr. John P. Akolt, of Denver, Colo.; Mr. James J. Cosgrove, of Ponca City, Okla.; and [fol. 37] Vogelsang, Brown, Cram, Feely, & Finney, by Mr. William G. Feely, of Washington, D. C., for the respondent.

Mr. David Rein, of counsel to the Board.

## **Decision, Findings of Fact, Conclusions of Law, Order and Direction of Election**

### **STATEMENT OF THE CASE**

On September 28, 1937, Oil Workers International Union, herein called the Union, filed with the Regional Director for the Seventeenth Region (Kansas City, Missouri) a petition alleging that a question affecting commerce had arisen, concerning the representation of employees at the Salt Creek Field, Columbine, Wyoming, of Continental Oil Company, Ponca City, Oklahoma, herein called the respondent, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Thereafter the Union filed charges alleging that the respondent had engaged in and was engaging in unfair labor practices within the meaning of the Act.

On October 9, 1937, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered an investigation of the question concerning representation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice, and acting pursuant to Article III, Section 10 (c) (2), and Article II, Section 37 (b), of said Rules and Regulations, further ordered the consolidation of the proceeding upon the petition with the proceeding upon the charges filed by the Union. On November 16, 1937, the Board, acting in accordance with Article II, Section 37 (c), and Article III, Section 10 (c) (3), of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered the transfer of the consolidated proceedings from the Seventeenth to the Twenty-second Region.

On February 11, 1938, upon the charges and amended charges filed by the Union, the Board, by the Regional Director for the Twenty-second Region, issued its complaint against the respondent. Copies of the complaint and notices of hearing upon the complaint and upon the petition were [fol. 38] duly served upon the respondent, the Union, Continental Employees Bargaining Association, herein called the Salt Creek Association, and Independent Association



of Conoco Glenrock Refinery Employees, herein called the Glenrock Association. The consolidated hearing was thereafter postponed upon notice. Upon further amended charges which were duly filed, the Board by the same Regional Director, on February 25, 1938, issued its amended complaint against the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1), (2), (3), and (5) and Section 2 (6) and (7) of the Act. Copies of the amended complaint accompanied by an amended notice of hearing were duly served upon the same parties. No amended notice of hearing was issued for the proceeding upon the petition, but the parties appearing at the hearing stipulated that proper notice of hearing had been given.

With respect to the unfair labor practices, the amended complaint alleged in substance that the respondent (1) had on January 18, 1937, and at all times thereafter, refused to bargain collectively with the Union which had been designated as the exclusive representative by a majority of its employees in an appropriate unit at Salt Creek Field; (2) had on August 12, 1935, and at all times thereafter, refused to bargain collectively with the Union which had been designated as the exclusive representative by a majority of its employees in an appropriate unit at Big Muddy Field; (3) had on August 12, 1935, and at all times thereafter, refused to bargain collectively with the Union which had been designated as the exclusive representative by a majority of its employees in an appropriate unit at the Glenrock Refinery; (4) had discharged and refused to reinstate Ernest Jones and F. D. Moore, thereby discouraging membership in the Union; (5) had dominated and interfered with the formation and administration of the Salt Creek Association; (6) had dominated and interfered with the formation and administration of the Glenrock Association; and, (7) by reason of said acts and by other acts, had interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act. On March 2, 1938, the respondent filed an answer to the complaint denying the unfair labor practices. At the hearing the complaint was further amended to allege that prior to June 12, 1937, the Union had acted under the name and [fol. 39] designation of International Association of Oil Field, Gas Well and Refinery Workers of America. The

respondent filed an answer to this amendment to the complaint.

Pursuant to the amended notice of hearing, a hearing was held at Casper, Wyoming, from March 3 through 17, 1938, before Waldo C. Holden, the Trial Examiner duly designated by the Board. The Board and the respondent were represented by counsel and participated in the hearing. The Union, the Salt Creek Association, and the Glenrock Association did not enter formal appearances, but officers of these organizations appeared and testified at the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. At the close of the hearing, the respondent moved to dismiss the proceedings in both cases on the grounds of lack of jurisdiction and lack of evidence to support the allegations in the complaint. The motion was denied by the Trial Examiner. During the course of the hearing the Trial Examiner made several other rulings on motions and on objections to the admission of evidence. The Board has reviewed all the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On May 11, 1938, the Trial Examiner filed his intermediate Report, copies of which were duly served upon all parties. He found that the respondent had engaged in the unfair labor practices alleged in the complaint and recommended that the respondent: (1) cease and desist from said unfair labor practices; (2) bargain collectively with the Union as the exclusive representative of the employees in the appropriate units at Salt Creek Field, Big Muddy Field, and the Glenrock Refinery, respectively; (3) withdraw recognition from the Salt Creek Association and the Glenrock Association; and (4) reinstate with back pay F. D. Moore and Ernest Jones. He further recommended that the respondent post notice of its intention to cease and desist from said unfair labor practices and state in such notice its intention of taking the affirmative steps recommended in the report.

On May 21, 1938, the respondent filed exceptions to the rulings of the Trial Examiner and to his Intermediate Report. On January 10, 1939, the respondent filed a brief, and on January 12, 1939, pursuant to notice duly served [fol. 40] upon the parties, a hearing was held before the Board for the purpose of oral argument on the exceptions

to the Intermediate Report and on the record. The respondent was represented by counsel and participated in the oral argument. None of the other parties appeared. The Board has considered the respondent's exceptions and its brief and in so far as the exceptions are inconsistent with the findings, conclusions, and order set forth below, finds them to be without merit.<sup>1</sup>

Upon the entire record in the case, the Board makes the following:

#### FINDINGS OF FACT

##### I. The Business of the Respondent

Continental Oil Company is a Delaware corporation engaged in the business of producing, refining, transporting, and marketing petroleum and petroleum products. It owns or controls oil and gas producing fields and refining plants in the States of Oklahoma, Kansas, Texas, New Mexico, Colorado, Utah, Montana, Wyoming, Arkansas, Louisiana, Arizona, California, and Maryland. It owns or controls outlets for the distribution and marketing of its products in 31 States and the District of Columbia.

The areas of operation involved in the instant case, two oil producing fields and one refinery, are all located in the State of Wyoming. The oil producing fields are Big Muddy Field, located at Parkerton, Wyoming, and Salt Creek Field, at Salt Creek, Wyoming. The refinery, known as the Glenrock Refinery, is situated at Glenrock, Wyoming, a few miles from Parkerton. The respondent produces approximately 1,000 barrels of crude oil daily at the Salt Creek

<sup>1</sup> The respondent, in its brief, contends that the denial by the Trial Examiner of an application for a subpoena duces tecum for the membership rolls of the Association of Continental Oil Company Employees at Big Muddy Field was arbitrary and capricious and a denial of due process of law. The respondent makes no showing, however, that the membership rolls of this organization are in any way relevant to any of the issues in this proceeding, or that the denial of the application for a subpoena in any way hindered the respondent in the presentation of its case. No such organization is named in the complaint, and the record is not clear that there is or ever was such an organization. The ruling of the Trial Examiner is accordingly affirmed.



Field, of which 650 barrels are produced for its own account. At the time of the hearing, these 650 barrels were being shipped to the Stanolind Oil and Gas Company pursuant to a contract of 6 months' duration. Prior to the [fol. 41] date of this contract, the crude oil produced at Salt Creek was normally disposed of by shipments to the respondent's refinery at Denver, Colorado, to the Glenrock Refinery, and to the Texas Company at Casper, Wyoming. Approximately 3,000 gallons of casing head gasoline are produced daily at Salt Creek all of which is shipped to the respondent's refinery at Lewiston, Montana.

At Big Muddy Field, the daily production approximates 1,200 barrels of crude oil, only 900 barrels of which are produced for the respondent's account. The entire 1,200 barrels are shipped to the Glenrock Refinery. The Glenrock Refinery refines daily approximately 2,500 barrels of crude oil and about 8,000 gallons of casing head gasoline. Approximately 60 per cent of the products of the Glenrock Refinery are shipped to points outside the State of Wyoming. Fifty per cent of the total fuel oil produced at the Glenrock Refinery is sold to the Chicago & Northwestern Railroad and the Chicago, Burlington & Quincy Railroad. The annual value of the finished products shipped from the Glenrock refinery approximates \$2,000,000.

## II. The Organizations Involved

Oil Workers International Union is a labor organization affiliated with the Committee for Industrial Organization. Prior to June 1937 it bore the name of International Association of Oil Field, Gas Well and Refinery Workers of America. It assumed its present name at a convention held in Kansas City, Missouri, from June 7 to 12, 1937.<sup>2</sup> The

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<sup>2</sup> The change was only in name, and continuity in organization was preserved. Oil Workers International Union had the same central offices, the same president and other officials as International Association of Oil Field, Gas Well and Refinery Workers of America. Oil Workers International Union continued to use stationery and letterheads upon which the name, International Association of Oil Field, Gas Well and Refinery Workers of America appeared, until the supply of such stationery and letter heads had been exhausted.

instant case involves Locals 242 and 233 of the Union. Local 242 admits to membership employees of the respondent employed at Big Muddy Field and at the Glenrock Refinery. Local 233 admits to membership employees of the respondent employed at Salt Creek Field.

Continental Employees Bargaining Association is an unaffiliated labor organization admitting to membership employees of the respondent employed at Salt Creek Field.

Independent Association of Conoco Glenrock Refinery Employees is an unaffiliated labor organization admitting [fol. 42] to membership employees of the respondent employed at the Glenrock Refinery, excluding those who have the power to "hire or discharge or reprimand or punish."

### III. The Unfair Labor Practices

#### A. Big Muddy Field

##### 1. The refusal to bargain collectively

###### (a) The appropriate unit

The complaint alleged that the appropriate unit at Big Muddy Field includes all production and maintenance employees. This allegation was not contested. From the testimony in the record, however, we believe it was the intention of the parties to exclude the production foreman and clerical employees.<sup>3</sup> The position of the Union with respect to head roustabouts (or gang pushers) was not clearly stated at the hearing. However, the district representative for the Union testified that head roustabouts were admitted into the Union at Salt Creek Field and that the rules of the Union made them eligible for membership. We will accordingly include head roustabouts in the appropriate unit.

<sup>3</sup> The pay roll of the respondent for Big Muddy Field, which was introduced into evidence at the hearing, carried the name of J. C. Thomas, district superintendent. However, since his duties entail supervision not only over Big Muddy Field, but over Salt Creek and Lance Creek Fields as well, he cannot properly be regarded as an employee at Big Muddy Field.

We find that all employees of the respondent at Big Muddy Field, excluding the production foreman and clerical employees, but including head roustabouts, constitute a unit appropriate for the purposes of collective bargaining, and that such unit insures to these employees of the respondent the full benefit of their right to self-organization and to collective bargaining and otherwise effectuates the policies of the Act.

(b) Representation by Local 242 of a majority in the unit

In an election conducted by the Petroleum Labor Policy Board in July of 1934, Local 242 was certified as the collective bargaining agency for the employees at Big Muddy Field. Of 31 votes cast in this election, 26 were cast for Local 242. Shortly after the passage of the Act, Local 242 circulated among the employees at Big Muddy Field a petition designating the Local as the collective bargaining agency. Of a total of 35 employees in the appropriate unit [fol. 43] at the time, 28 signed this petition. At the time of the circulation of this petition, therefore, Local 242 clearly represented a majority of the employees in the appropriate unit.

The respondent contends, however, that since the designation was of Local 242 of International Association of Oil Field, Gas Well and Refinery Workers of America, it cannot support an allegation of a refusal to bargain with Local 242 of Oil Workers International Union. Since Oil Workers International Union is the same organization as International Association of Oil Field, Gas Well and Refinery Workers of America, we find no merit in this contention.

The respondent further contends both in its brief and in oral argument that even if the Union represented a majority of the employees at the time of the circulation of the petition, it did not represent a majority of the employees in the appropriate unit at the time of the hearing. There is no evidence, however, that prior to May 1936, the date of the Union's last efforts at collective bargaining, any of the signers of the petition repudiated their signatures, or in any other way evidenced that they had withdrawn their designation of the Union as their collective bargaining agency. Any subsequent loss of majority would not constitute a defense to a refusal to bargain at that time. Whatever relevance the loss of majority might have would be in



connection with an order of the Board directing the respondent to bargain with the Union at this time. We will, accordingly, discuss this contention of the respondent in the section on the remedy, Section V, below.

We find that on August 12, 1935, the date of its first attempt at collective bargaining after the passage of the Act and thereafter, the Union was the duly designated representative of a majority of the respondent's employees at Big Muddy Field in an appropriate unit and that, pursuant to Section 9 (a) of the Act, was the exclusive representative of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

#### (c) The refusal to bargain

Shortly after the certification of Local 242 by the Petroleum Labor Policy Board, a workmen's committee of the Local, consisting of Ernest Jones, H. A. Schafer, and E. L. Simons, together with Albert D. Shipp, district representative [fol. 44] five of the Union, presented a proposed agreement to J. C. Thomas, superintendent of production for the Wyoming District. In response to this proposed agreement, the respondent, on or about September 18, 1934, issued a statement of working conditions for Big Muddy Field. Among other provisions, it contained the following policy: "No understanding between the company and any association of employees shall be considered binding upon employees not members of such association."

At the time of the issuance of this statement, R. S. Shannon, general superintendent of the respondent for the Rocky Mountain Division, announced that the respondent was ready to meet with any committee of its employees but would not recognize the Union as the bargaining representative for its employees. In addition, on September 15, 1934, the respondent addressed to all its employees at Big Muddy Field, individual letters concluding as follows:

\* \* \* we are of the opinion that those who wish to be represented by Local #240 (sic) of the International Association of Oil Field, Gas Well and Refinery Workers may do so, and that those who choose any other representatives, whether council, internal employe organization or any other are entitled so to deal with the management. The management is prepared to deal with any such organization as the

employees themselves, without management interference, choose to undertake.

On March 22, 1935, the Union in a letter to Shannon took exception to the refusal of the respondent to recognize the Union as the representative of its employees and to enter into a contract with the Union. As a result of this communication, a further meeting was held between the union committee and representatives of the respondent, at which Shannon reiterated the position of the respondent as stated on September 18, 1934.

Although the foregoing acts occurred before the passage of the Act, and therefore do not constitute unfair labor practices, they represent the respondent's attitude toward collective bargaining, in which the respondent persisted even after the passage of the Act.

On August 12, 1935, after the circulation of the petition in which the employees redesignated the Union as their [fol. 45] representative, a letter was delivered to Bartels, production foreman at Big Muddy, informing the respondent of that fact and requesting a conference for the purposes of collective bargaining. No answer to this request was received and on September 5, 1935, another letter requesting a conference was delivered to Shannon. Pursuant to this second letter, a meeting was held on or about September 26, 1935. Jones, F. D. Moore, Simons and Shipp were present for the Union, and Shannon and Thomas for the respondent. At the meeting, the union representatives told Shannon that they were the committee for Local 242 of the Union, and that the Union had been designated as the bargaining agency for the employees at Big Muddy Field. They informed him that they had in their possession a petition signed by a majority of the employees and asked him if he desired to see it. Shannon replied that he considered the petition immaterial and added that he raised no question as to whether the Union had been designated by a majority of the employees. A request that the Union be recognized as the exclusive bargaining agency was answered with the statement that the respondent maintained the same position as it had set forth on September 18, 1934, that it would not recognize any group of its employees as the exclusive bargaining agency, but was willing to meet with any committee of individual employees. Shannon further stated that the respondent would not enter into

any agreement with the Union, not even to embody the provisions which the respondent had set forth in its own statement of working conditions on September 18, 1934. At this point the meeting adjourned.

After a further exchange of letters had proved fruitless, the Union with the assistance of Michael E. Sherman, a conciliator for the U. S. Department of Labor, secured a further conference with the respondent on February 6, 1936, at which Thomas and Bartels were present for the respondent. A proposed contract presented by the Union was discussed and the parties came to an agreement as to working conditions, which were embodied in notes taken by Sherman. Thomas stated that he could not bind the respondent to these conditions but that he would submit them to Shannon together with his recommendation for their approval. No further communication was received from the respondent with regard to this proposed agreement.

On February 9, 1936, the Union requested the respondent [fol. 46] to commence negotiations for a wage increase. On March 9 Shannon replied, stating that the request was not made at a propitious time since an increase "would constitute a serious threat to the progress and life of the Company." The letter added, however: "As I have previously advised you, and in line with my letter of September 18, 1934, Foreman Bartels, District Superintendent Thomas, and I stand ready to meet with you at any reasonable time for the discussion of any subjects relative to working conditions in the Big Muddy field."

In the last week of April, Moore and Jones, two members of the workmen's committee, were informed that they were to be transferred to Hobbs, New Mexico. The committee called on Thomas and inquired as to the reasons for these transfers. The members were then informed for the first time that the respondent had decided to increase the hours of work at the field, effective May 1, 1936, and that this decision necessitated a curtailment in the force. The committee requested Thomas to postpone the transfers and the effective date of the increase in hours until a union committee could be heard on the matter. Thomas replied that he would communicate with Shannon and attempt to arrange a meeting. No meeting, however, was thereafter arranged, nor was the effective date of the increase of hours postponed. Thomas was then asked why Jones and Moore had been chosen to be transferred, to which he replied that he



had nothing to do with the transfers.<sup>4</sup> When Thomas was asked at the hearing why he had made this statement when, according to his own testimony, he and Bartels had together selected Moore and Jones to be transferred, he testified: "• • • at the time it made me kind of sore and I didn't think it was any of their business."

The last meeting between a union representative and a representative of the respondent took place in May 1936. Apparently as a result of a letter written by the Regional Director for the Seventeenth Region of the Board to Shannon, the latter approached Shipp for a meeting to discuss the tentative agreement which had been negotiated at the February 6 conference. Shipp asked Shannon whether he was in a position to bind the respondent to which Shannon replied that the discussion was to be a purely informal one. Shipp then asked him if he would enter into joint recommendations with Shipp which could then be referred to the central office of the respondent for adoption, and Shannon replied that he could not. Shipp saw no further purpose in continuing these discussions unless there was some possibility of arriving at an agreement. He told Shannon that unless the Union could meet with the management with a view to entering into a definite agreement, the Union would ask for no further meetings but would submit the case to the Board.<sup>5</sup>

We have made the foregoing findings on the basis, for the most part, of the testimony given by Shipp. We believe that Shipp's testimony is a substantially accurate account and the Union. It is supported not only by written correspondence which was introduced into evidence but by Shannon's testimony as well. Although Shannon denied many

<sup>4</sup> The transfers of Jones and Moore are discussed in subsection 2 below.

<sup>5</sup> The Union had already on March 24, 1936, filed charges with the Regional Director for the Seventeenth Region, and indeed, as stated above, it was apparently a letter from the Regional Director to Shannon that had inspired Shannon's overtures to Shipp. The Regional Director, however, requested the Union to withdraw its charges because the Board at that time did not wish to test the question of jurisdiction over employers engaged in oil production. Charges were again filed after the constitutionality of the Act had been sustained.

of the course of the negotiations between the respondent of the specific statements of Shipp, his own testimony substantiates the general tenor and purport of Shipp's account.

Shannon admitted that before April 12, 1937, the date upon which the Supreme Court sustained the constitutionality of the Act, the respondent refused to recognize any labor organization as the exclusive bargaining agency for its employees. With regard to Shipp's testimony that his proposal to enter into a contract upon the basis of the working conditions set forth in the letter of September 18, 1934, was rejected, Shannon testified as follows: "I recall the conversation, in regard to my letter of September 18, 1934, and Mr. Shipp again proposed we take up the agreement that they had originally submitted; and I stated to Mr. Shipp and the committee that we had given this matter thorough consideration; *that there were no specific problems that seemed to be up for discussion between ourselves and the committee that were not satisfactorily covered by that letter of September 18, and that I thought we could satisfactorily work along on that basis.* That was our viewpoint."<sup>6</sup>

This is tantamount to a statement that there would be no purpose in entering into an agreement which embodied the [fol. 48] provisions of the letter of September 18. In subsequent testimony which is set out below, this point is made even more strongly, thus supporting Shipp's own account.

With regard to Shipp's version of the meeting in May 1937, Shannon admitted that he had used the word "informal," but testified that he did not know that the word "informal" had any special meaning. He added: "Well, I think Mr. Shipp is confused as to the sense of our discussions. I was meeting with him as a representative of the company, and met with him at all times in that capacity; and I told him at that meeting that we would again discuss any matters that he wished to discuss, and such matters as I thought necessary I would refer to—any matters that I could not reach a conclusion here on that *I would refer, as I have in the past, to our company for consideration.*"<sup>7</sup> This "informality" was precisely what Shipp objected to. Despite meeting after meeting, the Union was no nearer an

<sup>6</sup> Italic supplied.

<sup>7</sup> Italic supplied.

agreement that it had been since it started negotiations in September 1934.

Most revealing of the respondent's position with respect to its obligations under the Act is Shannen's explanation of his failure to make any disposition of the terms of a proposed agreement that were negotiated at the conference of February 6, 1936. He testified that Thomas and Bartels had not made any recommendation, either for adoption or rejection of the proposed agreement and added: "I think they felt very much the same as I did about it; that there wasn't a great deal of difference." There were, in fact, substantial differences between the proposed agreement and existing working conditions, but more significant is the indication of the respondent's view of collective bargaining in this failure to recognize a distinction between a contract and a statement of working conditions revocable at the respondent's pleasure.

The conduct of the respondent throughout the course of the negotiations conforms with a familiar pattern to which we have had frequent occasion to advert in prior decisions.<sup>8</sup> [fol. 49] The respondent contends that its willingness to meet with representatives of the Union and discuss with them the proposals which they advanced, constitutes compliance with the Act. This willingness, however, was divorced from any intention to enter into an agreement with the Union. The respondent clearly considers the relationship existing between itself and the Union not as one of equal contracting parties, but rather as one of suppliant and benefactor. It views collective bargaining as a process wherein a labor organization may present requests, which the employer may either grant or deny as it sees fit, with

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<sup>8</sup> See, e. g., Matter of St. Joseph Stock Yards Company and Amalgamated Meat Cutters and Butcher Workmen of North America, Local Union No. 159, 2 N. L. R. B. 39; Matter of American Numbering Machine Company and International Association of Machinists, District #15, 10 N. L. R. B., No. 40; Cf. Matter of Atlas Mills, Inc. and Textile House Workers Union No. 2269, United Textile Workers of America, 3 N. L. R. B. 10; Matter of Globe Cotton Mills and Textile Workers Organizing Committee, 6 N. L. R. B. 461, modified in another particular and enforced as modified in March 30, 1939 (C. C. A. 5th).



the barest statement of the reasons for its action. If the request is denied an agreement is impossible because the parties are not in accord as to substance. If the request is granted, the respondent sees no need for an agreement, since the parties are already in accord as to principle. Carried to its extreme, this attitude resulted in the treatment given to the proposed agreement of February 6, 1936, with respect to which the respondent saw no need to communicate either its approval or disapproval to the Union, since it had already cavalierly determined "that there wasn't a great deal of difference." This attitude of the respondent fully justifies the characterization made by the Union in its first charge filed with the Regional Director for the Seventeenth Region, that the respondent was attempting to make a "farce" of the Union's efforts to bargain collectively. At no time did the respondent exhibit any disposition to engage in genuine collective bargaining with the Union toward a satisfactory solution of the various problems in issue.<sup>9</sup>

We have heretofore concluded that such conduct as the respondent's does not constitute collective bargaining within the meaning of Section 8 (5) of the Act. In Matter of St. Joseph Stock Yards Company and Amalgamated Meat Cutters and Butcher Workmen of North America, Local Union No. 159,<sup>10</sup> we stated our reasons for this conclusion as follows:

An assertion that collective bargaining connotes no more than discussions designed to clarify employer policy and [fol. 50] does not include negotiations looking toward the adoption of a binding agreement between employer and employees is contrary to any realistic view of labor relations. The development of those relations had progressed too far when the Act was adopted to permit the conclusion

<sup>9</sup> Compare the Report of the President's Commission on Industrial Relations in Sweden in which it is pointed out that in Sweden, the "right of collective bargaining is defined to include the obligation of the opposite party to enter into negotiations, to attend joint meetings, and, where necessary, to make 'proposals supported by reasons for the settlement of the question concerning which negotiations are instituted.' " See p. 7 of the Report.

<sup>10</sup> 2 N. L. R. B. 39.

that Congress intended to safeguard only the barren right of discussion . . . that attitude . . . is designed to thwart and slowly stifle the Union by denying to it the fruits of achievement. It is based upon the knowledge that in time employees will grow weary of an organization which cannot point to benefits that are openly credited to its aggressiveness and vigilance and not to an employer's benevolence that on the surface may appear genuine but in truth is forced upon the employer by the organization. To many his unwillingness to enter into an agreement with a labor organization may seem no more than a harmless palliative for the employer's pride and to amount only to a petty refusal to concede an unimportant point purely as a face-saving device. But the frequency with which the old Board was compelled to denounce such a policy on the part of employers indicates its potency as a device subtly calculated to lead to disintegration of an employee organization.

Moreover, the respondent's refusal to grant recognition to the Union as the exclusive bargaining agency and its repeated insistence that it would continue to bargain with other groups of employees is, in itself, an unfair labor practice. We have heretofore stated that the granting of recognition as sole bargaining agency "is a fundamental and initial element of the duty to bargain collectively."<sup>11</sup> The respondent offers the contention that despite this repeated insistence, it did in fact deal exclusively with the Union, since no other group requested meetings. It is clear, however, that the force and effect of the respondent's refusal to grant exclusive recognition were not vitiated by its inability to achieve its intention of treating other groups of employees on the same terms.

We find that in August 1935 and thereafter, the respondent refused to bargain collectively with the Union as the [fol. 51] representative of its employees in an appropriate unit at Big Muddy Field with respect to rates of pay, wages, hours of employment, and other conditions of employment,

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<sup>11</sup> Matter of Acme Air Appliance Company, Inc. and Local No. 1223 of the United Electrical Radio & Machine Workers of America, 10 N. L. R. B., No. 123. See also Matter of The Boss Manufacturing Company and International Glove Workers' Union of America, Local No. 85, 3 N. L. R. B. 400.

and that it thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

## 2. The Discriminatory Transfers

In the last week in April 1936, both Ernest Jones and F. D. Moore were informed by their foreman, Bartels, that they were to be transferred to Hobbs, New Mexico. Jones was employed as a relief pumper at Big Muddy Field at the time of such notification and the transfer would have entailed a demotion from pumper to roustabout. Jones had been in the employ of the respondent since 1926,<sup>12</sup> and had worked at Big Muddy since August 1928. Of 30 men in the field, he ranked about fifth or sixth in seniority. He was a charter member of Local 242 of the Union. He was elected to the workmen's committee of the Local in 1934 and has served as chairman of the committee from November 1934 to the date of the hearing. He had been vice president of the Local for 6 months in 1934, and financial secretary and treasurer from June 1935 to the date of the hearing. He had also been chosen by Local 242 as a delegate to the Oil Workers Council for the State of Wyoming. Jones was about 35 years old when he was ordered transferred.

Moore was employed as a roustabout at the time of the notification of transfer and had been employed at Big Muddy Field since 1919. He was second in seniority at Big Muddy Field. Moore joined Local 242 in the fall of 1933, and except for one short interval, had been on the workmen's committee since the latter part of 1934. At the time of the notice of transfer, he was second vice president of the Local and its representative to the Central Labor Council. He was also a member of the legislative committee of that body. Moore was about 54 years old at the time he was ordered transferred.

<sup>12</sup> The respondent corporation did not come into existence until 1929, when an earlier Continental Oil Company was consolidated with the Marland Oil Company. However, there was no disruption in the continuity of work or the employment of personnel, and indeed the respondent, at the time of the hearing, had awarded 10-year service buttons to some of its employees, taking into account service before the date of the merger.



After Jones and Moore had been notified of these transfers, representatives of the Union called upon Thomas and [fol. 52] Bartels. They were informed that two other employees in addition to Moore and Jones were being transferred, but to a nearby field in Wyoming. Thomas told them that these transfers had resulted from the decision of the respondent to operate Big Muddy Field on a 48-hour week, effective May 1, which would necessitate a reduction in personnel. The union representatives then asked why Jones and Moore had been chosen for transfer to New Mexico. They pointed out that both Jones and Moore had considerable seniority and that it would have been more equitable to have chosen younger men both in age and in length of service. Thomas replied that he, alone, had not ordered the transfers and that he was not in a position to change them. He promised, however, that he would attempt to arrange a meeting with Shannon. At the hearing, Thomas testified that he and Bartels had together selected Jones and Moore to be transferred. As described above, he said that he had denied that he had had anything to do with it, because "at the time it made me kind of sore and I didn't think it was any of their business." The promised meeting with Shannon never materialized.

Both Jones and Moore refused the transfer, each of them stating that he could not accept the transfer and move to Hobbs because his wife was ill. Jones thereafter reported for work at Big Muddy Field on two successive days. On each occasion he was told either by Thomas or Bartels that there was no work. On the last occasion Bartels asked him "how far (he) thought (he) could get by coming to work every morning" and that Shannon had already been informed that he "had quit."

However, when investigation showed that Moore's wife was bed-ridden, Moore was offered a transfer to Ft. Collins, Colorado. Upon his refusal of this offer, he was told that he could continue to work at Big Muddy Field. Moore testified that Bartels told him this offer was only for the duration of his wife's illness. Bartels, who denied that he had placed this condition on the offer of reemployment, testified as follows with respect to the incident:

There was something said about his wife's illness, wondering whether when she got well if we would try to transfer him again. I said, "Well, why worry about that,

Dinty?" The nature of his wife's illness she would be laid up for 5 years or so, "and you might have a different fore-[fol. 53] man here at that time that could get along with you."

Since the reason for offering Moore reemployment at Big Muddy Field was his wife's illness, Moore's version of the incident is the more reasonable one. This conclusion is strengthened by Bartel's equivocal denial which permits the inference that the condition was implicitly understood between the men, even if not explicitly stated. Moore refused to accept this offer of reemployment on a temporary basis and did not thereafter report for work.

The respondent contends that both transfers were not discriminatory, but were made upon the basis of efficiency. The increase in hours made it necessary to transfer four employees. According to the respondent, since there was room for only two in the other fields in Wyoming, and since Jones and Moore were the most inefficient, it was decided to transfer them outside the State.

Although testimony was introduced by the respondent in an attempt to support its contention that Jones and Moore were inefficient we need not, however, decide their relative efficiency compared with the other employees. We are satisfied from the record that efficiency was not in fact a determinant in the selection of men to be transferred.<sup>13</sup> Instructions to Thomas from Joe Dyer, vice president of the respondent in charge of production, were to the effect that in the course of the reduction in personnel, inefficient men were not to be transferred, but to be discharged. Admittedly, both Jones and Moore were to remain in the respondent's employ, and their alleged inefficiency would apparently have been as detrimental to the respondent at

<sup>13</sup> Cf. Matter of The Kelley-Springfield Tire Company and United Rubber Workers of America, Local No. 26 and James M. Reed and Minnie Rank, 6 N. L. R. B. 325, where we stated as follows: "While proof of presence of proper causes at the time of discharge may have relevancy and circumstantial bearing in explaining what otherwise might appear as a discriminatory discharge, such proof is not conclusive. The issue is whether such causes in fact induced the discharge or whether they are but a justification of it in retrospect."

Hobbs as at Big Muddy Field. Moreover, at the time of the notice of transfer, neither Jones, Moore, the union committee, nor the foreman at Hobbs were told that inefficiency was the basis of selection.

The respondent contended that none of the other foremen of the Wyoming fields would accept either Jones or Moore and it was therefore necessary to transfer them out of the [fol. 54] Wyoming district. However, when Whitlock, another employee at Big Muddy Field who was one of the four originally selected to be transferred, was rejected by Bowen, the foreman at Salt Creek, it was decided to keep him at Big Muddy Field and transfer Canning instead who was more efficient and therefore satisfactory to Bowen.

Shannon contended at the hearing that although unsatisfactory at Big Muddy Field, Jones might prove to be efficient at Hobbs, since it was a new field and would present new opportunities. Shannon argued that it was helpful for young men in the oil business to obtain varied types of experience. Upon such basis, however, it is reasonable to assume that the respondent would not have chosen Jones, an employee of 10 years seniority for the purpose of giving him additional experience, especially since this transfer entailed a demotion. The contention was made by Shannon, with respect to Moore, that although he had been inefficient as a roustabout, he was being transferred to Hobbs as a tool dresser, a job he had formerly held, and at which he had proven satisfactory. This contention, however, when contrasted with the testimony of Thomas that his judgment as to Moore's inefficiency was based to a considerable extent upon his work as a tool dresser at Big Muddy Field, is clearly without merit.

The motivation for the transfer of Moore and Jones at that time may be seen in the decision of the respondent to increase the hours of work at Big Muddy Field. The respondent was aware that the Union was opposed to such an increase and might attempt to take steps to prevent it. The hours of work had been a subject of negotiation between the respondent and the workmen's committee of Local 242. Although the committee was composed of three members, Moore and Jones were the only two who had been constantly on the committee, since the third member was changed from time to time. The respondent in its brief argues that the president of the Local, Charles Erwin, was not transferred at this time, whereas if the respondent had sought to oust



active union members, this officer would obviously have been singled out. Erwin, however, was not a member of the workmen's committee, and the record is clear that Jones and Moore were most active in all negotiations with the respondent. It is significant that at the nearby fields in Wyoming, Lance Creek, and Salt Creek, where the Union had not yet [fol. 55] organized, the hours of work had been increased some months before. The inference is plain that the only reason for the delay in announcing the increase in hours at Big Muddy Field was the presence of the Union. Concurrently with the announcement of an increase in hours, the transfer of the two most militant members at the Field was also announced. We conclude that the transfers were made in order to remove the backbone of the Union and prevent an effective opposition to the increase in hours.

This conclusion is strengthened by the respondent's repeated evasions of the Union's efforts to bargain with respect to the hours of work, and its arbitrary refusal to discuss the question of these transfers with a union committee. In addition, Bartels' expressed hostility toward Jones and Moore for their union activity further buttresses our conclusion. Jones testified that in the course of an incident in which he had been censured and threatened with discharge because his well had not been running, Bartels told him, "Well, if you quit your union foolishness and do a little more work, why, you could go ahead with your job." Moore testified that at the time of the transfers, Bartels expressed resentment that the men were taking up the matter with the Union. When Moore asked Bartels if he was being transferred because of his union affiliations, Bartels replied, "I can't say." He subsequently asked Moore if he was being advised by Shipp and added, "If I'd got rid of you Union men long before this, we wouldn't have had this trouble."

Bartels denied generally that he had ever criticized Jones or Moore for their union activities, and stated that he had never had more than a casual conversation with them about the Union. He did not deny, however, that he had made the specific statements attributed to him. We believe that the testimony of Moore and Jones is correct.

In summary, the evidence shows that the two most militant union members, both of whom ranked high in seniority, were ordered transferred on the eve of an increase in the hours of work after the respondent had evaded or ignored repeated efforts by the Union to bargain with respect to

hours of work and other conditions of employment. Although the justification offered by the respondent for the transfers was that these men were inefficient, the record does not support a finding that efficiency was the deciding [fol. 56] factor in selecting the men to be transferred. The Union's inquiry to discover the basis used in the choice of men to be transferred was met by the respondent with an uncompromising refusal to discuss the matter. That these men were undesirable to the respondent because of their prominence in the Union is further shown in the anti-union statements made by the field foreman. Upon the basis of all these factors we conclude that Jones and Moore were ordered transferred because of their union activities. ○

The respondent further contends with respect to Moore that even if his transfer was discriminatory, the respondent thereafter offered to reemploy him at Big Muddy Field. This offer, however, was conditioned upon the duration of the illness of Moore's wife. Moore testified that he would have gone back to work if he had been offered a job on a permanent basis. He was not required, however, to accept the job on a temporary basis.<sup>14</sup> We have heretofore held that whenever any substantial change in the status of an employee is made upon a discriminatory basis, the refusal of the employee to accept the change status cannot be considered as a resignation from employment.<sup>15</sup> In the present case, the offer of reemployment upon the condition that it would last only so long as his wife was ill was discriminatory. Accordingly the refusal of this offer by Moore did not operate as a voluntary termination of employment.

<sup>14</sup> The respondent contended at the hearing that if Moore had gone back to work, he would still be employed, since his wife was still ill. Moore, however, understood that this employment at Big Muddy Field would continue only so long as his wife remained bed-ridden. In all events, however, the offer was one of temporary employment, conditioned upon the recovery of his wife.

<sup>15</sup> Matter of Waggoner Refining Company, etc. and International Association of Oil Field, Gas Well, and Refinery Workers of America, 6 N. L. R. B. 731. Cf. Matter of Clover Fork Coal Company and District 19, United Mine Workers of America, 4 N. L. R. B. 202, order enforced in *Clover Fork Coal Company v. National Labor Relations Board*, 97 F. (2d) 331 (C. C. A. 6th, 1938).

We find that the respondent, by its transfers of Moore and Jones and the subsequent imposition of a condition upon the reemployment of Moore, discriminated in regard to their hire and tenure of employment and the terms and conditions of their employment, thereby discouraging membership in the Union, and thereby interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

[fol. 57] Jones was earning \$117.50 a month at the time his services were terminated. The rate of pay for his job was thereafter increased to \$130 and subsequently to \$140 a month. Jones has been conducting a general store since May 1936 and has been postmaster for Parkerton, Wyoming, since May 1937. Moore was earning \$112.50 a month at the time his services were terminated, but the rate of pay for his job was thereafter increased to \$125 a month and subsequently to \$135 a month. He has been employed as a guard at the State Penitentiary since 1936 at a salary of \$70 a month in addition to room and board.

### B. Glenrock Refinery

#### 1. The refusal to bargain collectively

##### (a) The appropriate unit

The complaint alleged that the production and maintenance employees of the respondent employed at the Glenrock Refinery constitute an appropriate unit. This allegation was not contested. We will, however, in accordance with our usual practice exclude supervisory and clerical employees.

We find that the production and maintenance employees of the respondent at its Glenrock Refinery, exclusive of supervisory and clerical employees, constitute a unit appropriate for the purposes of collective bargaining, and that such unit insures to these employees of the respondent the full benefit of their right to self-organization and to collective bargaining and otherwise effectuates the policies of the Act.

##### (b) Representation by Local 242 of a majority in the unit

In an election conducted by the Petroleum Labor Policy Board in July 1934, Local 242 of the Union was certified



as the collective bargaining agency for the employees of the Glenrock Refinery. Of 80 votes cast in this election, 54 were cast for Local 242. Shortly after the passage of the Act, Local 242 circulated among the employees of the refinery a petition designating the Local as the collective bargaining agency. Of a total of approximately 80 employees in the appropriate unit at the time, 46 signed this petition, therefore, Local 242 clearly represented the majority of the employees in the appropriate unit.

The respondent contends that between the time of the election conducted by the Petroleum Labor Policy Board [fol. 58] and the circulation of the petition, a majority of the employees signified their acceptance of an Employees Council Plan, and that this acceptance vitiated the designation of Local 242. However, the Employees Council Plan was admittedly sponsored and supported by the respondent, and upon the decision by the Supreme Court that the Act was constitutional the respondent deemed it desirable to sever its relations with this organization.<sup>16</sup> The acceptance of the Employees Council Plan was not, therefore, the expression of a free choice by the employees and may be disregarded.

We have already discussed two further contentions of the respondent: (1) that the designations were in fact of Local 242 of International Association of Oil Field, Gas Well and Refinery Workers of America, and (2) that, even if it be granted that Local 242 represented a majority of the employees in the appropriate unit at the time of the refusal to bargain, it did not represent a majority at the time of the hearing.

We find that on August 12, 1935, the date of its first attempt to bargain collectively after the passage of the Act, and thereafter the Union was the duly designated representative of a majority of the respondent's employees at its

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<sup>16</sup> The respondent offers the contention that, since after a hearing before the Petroleum Labor Policy Board, the Employees Council Plan was declared a legal organization, that decision is binding upon this Board. However, the decision of the Petroleum Labor Policy Board was based upon another act and was issued before the passage of the National Labor Relations Act. Moreover, as stated in the text, the respondent itself recognized the illegality of the organization.

Glenrock Refinery in an appropriate unit and pursuant to Section 9 (a) of the Act was the exclusive representative of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment.

(c) The refusal to bargain

The conduct of the respondent in response to the request of the Union to bargain collectively for the employees of the Glenrock Refinery, falls into a pattern similar to that which we have set forth above with respect to Big Muddy Field. Shortly after the certification of Local 242 by the Petroleum Labor Policy Board, Shipp called upon Carl R. Tillman, the superintendent of the Glenrock Refinery, and expressed the desire of the Union to meet with the respondent and negotiate a collective agreement. In the course of the discussion Shipp objected to the action of the respondent in bargaining with the Employees Council Plan, despite the certification of the Union, as the bargaining agency for the employees of the refinery. Tillman replied that the respondent preferred to meet directly with its employees and would continue to do so. Thereafter, the Union's proposal for a contract covering working conditions was answered in a letter dated September 22, 1934, similar in context and form to the letter of September 18, 1934, which was issued at Big Muddy Field and containing a paragraph identical with the one we have quoted from that letter.

At a subsequent meeting in December 1934, at which Walter Miller, vice president in charge of refining, appeared for the respondent, Miller stated that the respondent was willing to meet with any committee of employees or with any individual employee, but would not recognize any group as the exclusive bargaining agency. Subsequently, in April 1935, the respondent announced a wage increase and stated that it had been secured through the efforts of the Employees Council Plan.

The passage of the Act marked no change in the attitude of the respondent. A letter to the respondent stating that a petition designating the Union as bargaining agency had been signed by a majority of the employees and requesting a conference for the purpose of collective bargaining was answered by Miller in the following terms:

I have answered right along that as a result of the conferences and meetings we have held in the past there was a full understanding between us regarding the working conditions which the company has maintained and methods of handling grievances with employees,<sup>17</sup> and thought that the company's attitude regarding its relations with employees was thoroughly understood. I am therefore at a loss to understand exactly what you have in mind when you state you wish to make a collective bargain, as according to my [fol. 60] way of thinking we have been collectively bargaining with our employees for a considerable length of time past, one group through the Council and the other group through the committee of employees representing Local Union 242.

After a further exchange of correspondence, a meeting was held at which Tillman appeared as the representative for the respondent. The Union presented a proposed agreement covering working conditions and terms of employment. Tillman announced that he could not bargain with the Union on these matters but that he would refer the proposed agreement to Miller. On January 31, 1936, Miller in a lengthy letter to the union committee, rejected every one of the union proposals, stating that most of the matters had been covered in the September letter. He stated that the working conditions therein set forth were still being maintained, reaffirmed the existing working conditions, and the grievance procedure described in the September letter,<sup>18</sup> and concluded as follows:

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<sup>17</sup> The letter of September 22 prescribed qualifications for members of any committee with which the respondent would discuss grievances as follows: "It is understood that a committee submitting a grievance for any employee in the group or association which it represents will be selected from among such group or association of employees of the Glenrock refinery, and that to be eligible for membership on such a committee an employee shall be an American citizen and have been actively engaged in the oil industry for one year next preceding his election \* \* \* It is also understood that in the selection of this committee each employee in the group which it represents is to have one vote for each member to be elected."

<sup>18</sup> See foot note 17.



Generally speaking, with the exception of Item 2, all the requests made above which are not included in our working conditions are points which have been brought up and discussed a number of times before. The writer has gone over them with Mr. Daly<sup>10</sup> alone, and with Mr. Daly and the committee. He has gone over them with Mr. Shipp alone, with Mr. Shipp and the committee, and with some individual members of the committee. He is ready to come to Glenrock for a meeting and discussion at any time within reason if it appeared that some good could be accomplished, but in view of the number of times the disagreed points have been discussed, the details of the company's attitude are undoubtedly well known to all of you.

A subsequent request for a wage increase was denied on March 14, 1936, in a letter of much the same tone. This letter marked the end of negotiations between the respondent and the Union. During the course of negotiations, no counter proposals were ever made by the respondent. The respondent contends that its conduct constituted genuine collective bargaining. However, we have already fully discussed this contention of the respondent in our section on [fol. 61] Big Muddy Field. Our discussion there is equally applicable to the respondent's position at the refinery.

We find that in August 1935, and thereafter the respondent refused to bargain collectively with the Union as the representative of its employees in an appropriate unit at its Glenrock Refinery, with respect to rates of pay, wages, hours of employment, and other conditions of employment, and has thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

## 2. The company-dominated union

At the election conducted by the Petroleum Labor Policy Board in 1934, a minority of the employees at the Glenrock Refinery registered their approval of an employee-representation plan. At the time, however, no plan had been organized or was in existence. Subsequent to the election, a committee of employees, with the assistance of Miller, circularized the employees of the refinery, suggesting that the minority which had endorsed a plan of employee representa-

<sup>10</sup> Daly was Shipp's predecessor.

tion should proceed to organize such a plan and put it into operation. With the assistance of the respondent, an employee representation plan evolved. This plan was known as the Employees Council Plan.

The plan which thus had its origin made no provision for membership meetings and left the conduct of its business to the employee representatives. All expenses of the plan were paid by the respondent. The employee representatives who were selected chose as their secretary Fred Davis, chief clerk of the refinery. Davis attended meetings and took part in the discussions of the representatives. Whenever the representatives decided to present a grievance, it was presented to the respondent through Davis.

After the Supreme Court decisions sustaining the constitutionality of the Act, Walter Miller in a letter to Tillman, the manager of the refinery, stated that the plan as operated was no longer lawful, and that therefore the respondent could no longer deal with it. He suggested, however, that the plan be changed to conform with the law and advanced the opinion that the plan could be made legal by two simple changes: (1) the cessation of financial support by the respondent, and (2) the exclusion of any agent of the respondent from meetings of the employee representatives. He [fol. 62] further suggested that the employee representatives could either revise "the present form to conform with the Act," or, in the alternative, create "a new labor organization to supplant the present council plan." He concluded the letter with a direction to Tillman to "Tell the men that if they decide to work up something to fit the new conditions, and want to consult with me, I shall be glad to come to Glenrock for the purpose in the near future."

Tillman testified that, despite these instructions, he never showed the letter to the employee representatives, or told them about it, except for the statement that since the Act had been upheld, the respondent could no longer deal with them. The employee representatives, on their part, denied ever having seen the letter or being apprised of its contents.

However, a witness called by the Board testified that at a meeting held soon after the receipt of this letter by Tillman, Charles Martin, one of the employee representatives, opened the meeting by stating, "As we all know, this Wagner law has killed our company union, and it is the wishes of the company that we form some other kind of an organization that we can bargain with them." At that point, one of the

members of the audience remarked, "You know what Mr. Miller wants us to do, why don't you read that letter that Mr. Miller sent us, that was read to us out at the plant?" Subsequent events in which the employee representatives in fact followed the course of action prescribed in Miller's letter lead us to conclude that Tillman apprised the representatives of the contents of the letter. Thereafter, the employee representatives, with the assistance of Davis, drew up a new plan which in effect was merely the old plan revised to meet certain of the objections raised by the Act. The employee representatives then called a meeting of the employees of the refinery at which Martin stated the reasons for the termination of the old plan and presented the new plan for approval. The revised plan, however, failed of acceptance and was dropped.

About a month later, another meeting at which Martin was again the most active figure, was called. Those present at the meeting proceeded to select a committee, among whose members were Martin and one or two members of Local 242 of the Union, to draw up a constitution and by-laws for an independent union. This committee drafted a constitution and by-laws, which in large part were patterned after the [fol. 63] Employees Council Plan, although enshrouded in a rhetorical declaration of the rights of working men. This device, together with a change in name, proved successful and at a meeting held at the City Hall and attended by some 14 employees the constitution and by-laws of the new organization, which had been denominated as Independent Association of Conoco Glenrock Refinery Employees, were approved.<sup>20</sup> Thereafter a petition approving the constitution and by-laws was circularized throughout the plant and signed by a majority of the employees of the refinery.

With little change, the Glenrock Association assumed the position of the Employees Council Plan. The machinery for the presentation of grievances was identical, except for the omission of Davis' position as intermediary between the organization and the management. However, communications from the management to the Glenrock Association were all written on stationery headed "For Interdepartment Cor-

<sup>20</sup> Some of the latter meetings of the Glenrock Association were held in the high school auditorium, the use of which was secured through the intervention of Davis, chief clerk of the refinery.



respondence Only." Requests or demands of the Glenrock Association were assigned case numbers by the respondent in a fashion similar to that in which cases had been treated when presented under the Employees Council Plan. Indeed, the respondent's answer to at least one of the requests of the Glenrock Association referred as a precedent to a decision, which had been arrived at under the Employees Council Plan.<sup>21</sup> The respondent regarded the Glenrock Association [fol. 64] as a continuation of the Employees Council Plan and assumed a continuity of organization in the Employees Council Plan, the abortive attempt to revise it, and the Glenrock Association.

<sup>21</sup> A sample of the correspondence from the company to the Glenrock Association reads in part as follows:

Continental Oil Company

For Interdepartment Correspondence Only

To: Independent Association of Conoco Glenrock Employees.

Subject: Case No. 4—Kellogg Still Fireman Request Wage Scale Adjustment to Bring Rate to Approximately 5 Cents Above Pumper, Treater, and Loader Rates.

I have made a particularly close study of this case, and because of the comparisons made between cracking still rates and those of boilerhouse firemen, pumpers, treaters, et cetera, referred back to Employee Council Case No. 18, in which some points bore a similarity to those presented here.

In that case, presented to Management in a letter dated February 21, 1936, the statement was made, "The Petitioners further state that there are several Kellogg operators receiving less pay than men of shorter service and less experience are receiving for the jobs from which the Kellogg operators were transferred."

. . . . .

It seems to me that a paragraph from my letter of March 14, 1936, in connection with Council Case No. 18 can well be read in connection with this case. That paragraph read as follows:

. . . . .

Soon after its establishment the Glenrock Association requested recognition as bargaining representative for members of the organization. Miller in a letter of reply recognized the Glenrock Association as the exclusive bargaining agency within the terms of the Act, and in the same letter which had already granted recognition, requested the officers of the Glenrock Association to assure him that the organization had been designated by a majority of the employees of the Glenrock Refinery.<sup>22</sup>

This alacrity in recognition of the Glenrock Association is in startling contrast with the response to similar requests by Local 242, both at Big Muddy Field and at Glenrock. The respondent argues that the reason for the difference in treatment stemmed from the upholding of the Act by the Supreme Court in the interim. This argument, however, does not explain the abandonment of ordinary caution in ascertaining the existence of a majority, nor was this shift in attitude reflected in the response to a request for recognition by the Union at Salt Creek Field, which was also made after the Supreme Court decisions. The inference is clear that the motivation underlying the respondent's alacrity in recognizing the Glenrock Association was a desire to favor this organization rather than a desire to conform with the law.

This attitude of support and cooperation on the part of the respondent was reciprocated by the Glenrock Association. When a request for a wage increase was denied by the respondent, the officers of the Glenrock Independent invited Miller to attend a meeting of the organization to explain the position of the respondent, because they "figured that Miller could give this picture better than [they]." The minutes of this meeting concluded with the observation that "all seemed to be satisfied with the statements made" since "no questions were asked."

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<sup>22</sup> The letter concluded as follows:

It is the sincere hope of the management of the Continental Oil Company that the friendly relationship which has existed between Management and the workers for so many years will continue, [sic] and that the collective bargaining relationship thru the Independent Association of Conoco Glenrock Refinery Employees, as established by the decision of the employees themselves, and this acceptance thereof by the Company, will operate as a means for continuing such friendly relationships.

[fol. 65] The evidence shows that the respondent dominated and interfered with the formation and administration of the Glenrock Association. The inspiration for the organization of the Glenrock Association came from the respondent and the respondent actively assisted in its formation. After the formation of the Glenrock Independent, the respondent treated it as a continuation of the Employees Council Plan, an admittedly company-dominated labor organization.<sup>23</sup> It assisted the Glenrock Association in procuring a meeting place, and more significantly, granted the organization recognition as the exclusive bargaining agency, upon an unverified statement that it had been designated by a majority of the employees. As described above the respondent had previously maintained the position with respect to Local 242 that it would not recognize any labor organization as the exclusive representative of its employees. The reason for this sudden change in position and startling eagerness to comply with the Act when approached by the Glenrock Association is too obvious to require explanation. In contrast with the very dissimilar treatment given to Local 242, such recognition must have established in the minds of the employees the favoritism of the respondent toward the Glenrock Association.<sup>24</sup>

We find that the respondent, by the above-described course of conduct, dominated and interfered with the formation and administration of the Glenrock Association and thereby interfered with, restrained, and coerced its em-

<sup>23</sup> Cf. Matter of Swift & Company, a Corporation and Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 641 and United Packing House Workers Local Industrial Union No. 300, 7 N. L. R. B. 269, and Matter of Swift & Company and United Automobile Workers of America, Local No. 265, 7 N. L. R. B. 287, where after the dissolution of a company union, a successor organization was formed at the suggestion of the employer. See also Matter of Inland Steel Company and Steel Workers Organizing Committee and Amalgamated Association of Iron, Steel, and Tin Workers of North America, Lodge Nos. 64, 1010, 9 N. L. R. B., No. 73.

<sup>24</sup> Cf. Matter of Fansteel Metallurgical Corporation and Amalgamated Association of Iron, Steel, and Tin Workers of North America, Local 66, 5 N. L. R. B. 930, order modified in another respect and enforced, 59 Sup. Ct. 490 (1939).



ployees in the exercise of the rights guaranteed in Section 7 of the Act.

### C. Salt Creek Field

#### 1. The alleged refusal to bargain collectively

##### (a) The appropriate unit

The Union contends that the appropriate unit for bargaining purposes in Salt Creek Field should include only those employees engaged in production work in the field and should exclude the employees engaged in the operation of the gas compression and reduction plant. The respondent contends that the appropriate unit should also include this latter group of employees.

The gas plant is operated to create a vacuum which draws natural gas from the wells in the field, thus permitting the oil in the wells to be pumped more freely. The natural gas is drawn through pipe lines into the gas plant where all moisture and gasoline are removed. The dry gas is then redirected by pipe line to the wells where it is utilized for the operation of the pumps and for other fuel purposes. The surplus of such gas is placed back into the wells and conserved for future use. The gasoline which is abstracted from the gas is known as casing-head gasoline and is sold as a separate product.

The men employed at the gas plant are divided into two main categories: operators, who operate the machinery in the gas plant, and roustabouts, whose duties involve the maintenance of the vacuum lines leading from the wells to the gas plant and any other general labor work that might be required of them. The respondent contends that the nature of the work performed by operators is similar to that performed by pumpers in the field, and that the duties of roustabouts in the plant and in the field are virtually identical. Both groups of roustabouts are engaged in general labor work, and there is evidence that field roustabouts occasionally assist in work on the vacuum lines and plant roustabouts assist on field pipe lines whenever an emergency might require such aid. The record does not disclose in detail the duties of operators although it appears that they earn \$5 more a month than the pumpers in the field.

At an election conducted by the Petroleum Labor Policy Board in 1934, both field and plant employees were voted as one unit without objection by the Union. Employees at

the gas plant are eligible for membership in Local 233 of the Union, and some of them had formerly been members, although at the time of the alleged refusal to bargain, the Union did not have a single member among the gas plant employees.

Since the Union is the only labor organization here in [fol. 67] volved,<sup>25</sup> we believe that its contention should be granted. The respondent maintains separate pay rolls for field employees and gas plant employees and designates its employees at Salt Creek Field as either field employees or gas plant employees, a distinction which is generally recognized by the men at Salt Creek. Although the respondent does not explain the reason for this practice, we must presume that there is sufficient reason in administrative convenience to justify this demarcation. We have previously held that employees should not be denied the benefits of the Act because organization has not yet pervaded the whole plant or enterprise of an employer, but has been limited to a single area or field.<sup>26</sup> We believe this principle to be applicable in the present case.

The parties are apparently in agreement that the appropriate unit should exclude the production foreman and the clerk at Salt Creek Field, but should include head roustabouts. Accordingly, we shall exclude the production foreman and clerk but include head roustabouts.

We find that the production employees of the respondent in the Salt Creek Field, including head roustabouts but excluding the production foreman, the clerk, and employees engaged in the operation of the gas compression and reduction plant constitute a unit appropriate for the purposes of collective bargaining, and that such unit insures to these employees of the respondent the full benefit of their right to self-organization and to collective bargaining and otherwise effectuates the policies of the Act.

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<sup>25</sup> The Salt Creek Association may, for this purpose, be disregarded since, as we find below, it was formed in violation of Section 8 (2) of the Act, and in any event, was not as of the date of the hearing a functioning organization.

<sup>26</sup> See Matter of R. C. A. Communications Inc. and American Radio Telegraphists Association, 2 N. L. R. B. 1109; Cf. Matter of Southern California Gas Company and Utility Workers Organizing Committee, Local No. 132, 10 N. L. R. B., No. 103.

(b) Representation by Local 233 of a majority in the unit

The course of negotiations between the Union and the respondent which led to the charge that the respondent had refused to bargain took place from January to May 1937. It was agreed at the hearing that the appropriate unit during this period contained 28 employees, although the pay rolls of the respondent introduced into evidence shows the number to have been 26 in January and 30 in March. We [fol. 68] shall adopt the agreement of the parties with respect to the number of employees in the appropriate unit during this period. In December 1936, the Union had been designated as the bargaining representative by 15 of the 28 employees in the appropriate unit. However, 1 of these 15, Feaster, after his designation of the Union and while negotiations were still under way, proceeded to organize an independent association for the purposes of collective bargaining with the respondent. Such activity must be regarded as a repudiation of his designation of Local 233, thus reducing the number which had designated the Union to 14.<sup>27</sup> The Union, therefore, at most represented a majority of the employees in the unit for only a short period during the course of the negotiations. Subsequent designations of the Union by 20 of the employees in the appropriate unit were made after the action upon which the charge of a refusal to bargain is based, and no notice of these new designations was given to respondent. These designations therefore cannot be considered as evidence of a majority at the time of the alleged refusal to bargain.

The record discloses that the respondent objected to meeting with union representatives who were not its employees, and that it failed to answer letters from the district representative of the Union on the ground that "his connection with [the] employees or the affairs of this company [were] entirely unknown." Moreover, the presentation by the

<sup>27</sup> Although we have previously held that we will discount any shift in union affiliation which is caused by a respondent's unfair labor practices, see Matter of Arthur L. Colten, and A. J. Colman, co partners, doing business as Kiddie Kover Manufacturing Company and Amalgamated Clothing Workers of America, 5 N. L. R. B. 355, in the present case, it appears that the idea of the formation of a rival unaffiliated union originated with Feaster, without any direction or impetus from the respondent.



Union of a proposed agreement was answered by a speech by Joe Dyer to the employees in assembly, in which Dyer assured the employees that they should be satisfied with their present working conditions. Nevertheless, since the Union did not represent a majority of the employees during the course of these negotiations, we do not find that the respondent refused to bargain with the representative designated by a majority of its employees in an appropriate unit at Salt Creek Field.

## 2. The company-dominated union

Soon after the decisions of the Supreme Court sustaining the constitutionality of the Act, Feaster and Hainworth, [fol. 69] two of the respondent's employees at Salt Creek Field, decided that an independent labor organization should be formed for the purpose of collective bargaining with the respondent. They communicated their intention to Bowen, production foreman for the Salt Creek Field, and asked for a conference with Shannon. Bowen arranged this conference and subsequently he and Kennelly, the foreman of the gas plant, drove Hainworth and Feaster into Casper to confer with Shannon. Hainworth told Shannon of their intention to form an independent union and asked Shannon what the "Wagner Law" provided in that respect. When asked why he consulted Shannon on a matter of this kind, Hainworth answered, "When I want to know anything, I go to my superiors for advice." Shannon told them that under the Act they had a complete right to form and organize an independent union, and they "discussed the Wagner Act for something like 15 or 20 minutes." Hainworth then asked Shannon, "would it be an unfair labor practice if you would scratch out on a little piece of scratch paper an outline for an appropriate heading for a petition?" Shannon smiled and said he would "take a chance." He then proceeded to prepare a heading for the petition.<sup>28</sup>

<sup>28</sup> The heading on the petition as circulated read as follows:

We, the undersigned, employees of the Continental Oil Company in the Salt Creek Field and Gasoline Plant, take this means of notifying the Company that we have grouped ourselves together for the purpose of bargaining with the Company as provided by law and have duly appointed the following men to act as a committee to represent us for this purpose.

This petition was thereafter circulated during working hours among the employees at Salt Creek Field and in at least one instance an employee was taken from his work with the approval of his supervisor in order to sign it. The petition was thus signed by a majority of the employees at Salt Creek and was then turned over by Feaster to Bowen. Shannon acknowledged receipt of the petition in a letter which also expressed his willingness to bargain with the Salt Creek Association.

The petition, however, was defective. Although providing for the designation of three employees as a committee to represent such a labor organization, the names of the three persons so to be designated were not set forth upon the petition. Later attempts by Feaster and Hainworth to organize this Salt Creek Association at subsequent meetings held for this purpose failed, and their plans never came to fruition.

[fol. 70] Despite the abortive nature of the Salt Creek Independent we believe that the respondent was guilty of unfair labor practices with respect to it.<sup>29</sup> An employer may not under the guise of advice or counsel, render assistance or aid in the formation of an organization whose purpose is that of collective bargaining with the employer. The taint of employer assistance in the process of formation will prevent the operation of such an organization as a labor organization free from employer influence. The policy of an employer in these matters must be strictly one of "hands off." In contrast, Shannon's policy was one of active assistance, aid, and encouragement.

We find that the respondent by its above-described activities dominated and interfered with the formation of a labor organization and thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

#### IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of the respondent set forth in Section III, above, occurring in connection with the operations of the

<sup>29</sup> Matter of Canvas Glove Manufacturing Works, Inc. and International Glove Makers Union, Local No. 88, 1 N. L. R. B. 519.

respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

### V. The Remedy

Having found that the respondent has engaged in unfair labor practices, we shall order it to cease and desist therefrom and to take such affirmative action as will remedy the effects of such unfair labor practices.

We have found that a majority of the employees within the appropriate unit at Big Muddy Field and at the Glenrock Refinery have designated the Union as their representative for the purposes of collective bargaining and that the respondent has refused to bargain with the Union as the exclusive representative of these employees. The respondent contends, however, that even though the Union represented a majority of the employees at Big Muddy Field and the Glenrock Refinery at the time of the refusals to bargain, the respondent should not now be required to bargain with the Union, because it no longer represents a [fol. 71] majority of the employees in these appropriate units. The evidence adduced at the hearing showed a considerable decrease in union membership. This decrease, however, is directly attributable to the respondent's unfair labor practices in refusing to recognize and deal with the Union,<sup>30</sup> and at the Glenrock Refinery, to the additional factor of the respondent's support and encouragement of the Employees Council Plan and its continuation, the Glenrock Association. Since the abandonment of the organization was the result of the actions of the respondent, if we failed to require the respondent to bargain with the Union, we would, as stated in *Matter of Lady Ester Lingerie Corp. and International Ladies Garment Workers Union—Affiliated with the Committee for Industrial Organization*<sup>31</sup> "be rewarding the respondent's illegal acts with partial suc-

<sup>30</sup> Compare the language quoted from *Matter of St. Joseph Stockyards*, at p. 13, above.

<sup>31</sup> 10 N. L. R. B., No. 39. See also *Matter of Missouri, Kansas & Oklahoma Coach Lines and International Association of Machinists* 9 N. L. R. B., No. 55.



cess and permitting the effect of the unfair labor practices to continue. . . . Such (a policy) would defeat not effectuate the policies of the Act. In order to effectuate the policies of the Act, we must restore, as nearly as possible the status quo before the unfair labor practices were committed and secure to the employees their right to bargain through the representatives they have selected with full freedom of choice." We shall, therefore, base our order upon the majority obtaining upon the date of the refusal to bargain and require the respondent to bargain with the Union upon request as the representatives of its employees in the appropriate unit at Big Muddy Field and the Glenrock Refinery.<sup>32</sup>

Although we have found that the respondent has not engaged in unfair labor practices in refusing to bargain with the Union as the representative of its employees at Salt Creek, we believe that the respondent should be ordered to bargain with the Union when and if it is designated by a majority of the employees in the appropriate unit. The record discloses that the refusal of the respondent to bargain with the Union was not based upon its belief that the Union did not represent a majority of its employees but was a reiteration of the position it had adopted toward the Union at both Big Muddy Field and the Glenrock Refinery. [fol. 72] Since the respondent has in two instances violated Section 8 (5) of the Act, and in another has evidenced a similar attitude of non-compliance, we believe that the policies of the Act will best be effectuated by requiring the respondent to bargain collectively with the Union upon request as the representative of the employees of the respondent in the appropriate unit at Salt Creek Field, in the event that the Union is designated as bargaining representative by a majority of such employees.<sup>33</sup> We shall so order.

We have found that the respondent dominated and interfered with the formation and administration of the Glenrock Association and dominated and interfered with the formation of the Salt Creek Association. Accordingly, we

<sup>32</sup> Matter of Bradford Dyeing Association (U. S. A.) (a corporation) and Textile Workers' Organizing Committee of the C. I. O., 4 N. L. R. B. 604.

<sup>33</sup> Cf. Matter of West Kentucky Coal Company and United Mine Workers of America, District No. 23, 10 N.-L. R. B., No. 10.

shall order the respondent to withdraw all recognition from the Glenrock Association, and to disestablish it as the representative of its employees for the purpose of dealing with the respondent concerning labor disputes, wages, hours of employment, or other conditions of employment. We will further order the respondent to withdraw all recognition from the Salt Creek Association. Since the Salt Creek Association is dormant and has ceased to function, it will not be necessary to order its disestablishment.<sup>34</sup>

We have found that the respondent has discriminated in regard to the hire and tenure of employment of Ernest Jones and F. D. Moore. We shall therefore order the respondent to offer to these employees full reinstatement to their former or substantially equivalent positions and to make each of them whole for any loss of pay he may have suffered by reason of such discrimination by payment to each of them of a sum of money equal to the amount which he normally would have earned as wages from the date of the termination of his employment to the date of the offer of reinstatement, less his net earnings,<sup>35</sup> during said period. [fol. 73] The termination of Moore's employment caused the loss by Moore of his insurance rights pursuant to a group insurance policy covering employees of the respond-

<sup>34</sup> Matter of Yates-American Machine Company and Amalgamated Association of Iron, Steel & Tin Workers of North America, Lodge 1787, 7 N. L. R. B. 627.

<sup>35</sup> By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for the unlawful termination of his employment and the consequent necessity of his seeking employment elsewhere. See Matter of Crossett Lumber Company and United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers Union, Local No. 2590, 8 N. L. R. B. 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects are not considered as earnings, but, as provided below in the Order, shall be deducted from the sum due the employee, and the amount thereof shall be paid over to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work relief projects.

ent. We shall therefore order the respondent to procure for Moore the restoration of these or substantially equivalent insurance rights.

## VI. The Question Concerning Representation

In answer to a request by the Union for recognition as the representative of the employees in the appropriate unit at Salt Creek Field, the respondent replied that it would recognize the Union only for its own members. Subsequent letters directed to the respondent by the district representative of the Union received the reply that the respondent was unaware of the district representative's connection with its employees. In its brief, the respondent explained these replies as resulting from the failure of the Union to prove that it had been designated by a majority of the employees in the appropriate unit at Salt Creek Field.

We find that a question has arisen concerning representation of employees of the respondent at Salt Creek Field.

## VII. The Effect of the Question Concerning Representation Upon Commerce

We find that the question concerning representation which has arisen, occurring in connection with the operations of the respondent described in Section I above, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

## VIII. The Determination of Representatives

We have already found the appropriate unit at Salt Creek Field as including the employees engaged in field operations but excluding the production foreman and the clerk and those engaged in the operation of the gas compression and reduction plan. We have also found that at the time of the alleged refusal to bargain, the Union had not been designated as their bargaining agency by a majority of the [fol. 74] employees in said appropriate unit. Subsequent thereto, cards designating the Union as their bargaining representative were signed by a majority of the employees. During the same period, the petition circulated by Feaster and Hainworth was also signed by a majority. Although we



have found that the respondent was guilty of unfair labor practices with regard to the preparation and circulation of this petition, under the circumstances of this case, we do not believe that we should certify the Union as bargaining representative. We find that the question which has arisen concerning representation of employees of the respondent at Salt Creek Field can best be resolved by holding an election by secret ballot. We have found the Salt Creek Association to have been formed in violation of the Act. Accordingly the name of the Salt Creek Association will not appear upon the ballot.

Although the Union requested that the date for the determination of eligibility to vote be September 1937, we believe this date to be too remote, and we will accordingly direct that the date for the determination of eligibility be that of the pay roll next preceding the date of the Direction of Election.

Upon the basis of the above findings of fact and upon the entire record in the case, the Board makes the following:

#### CONCLUSIONS OF LAW

1. Oil Workers International Union and Independent Association of Conoco Glenrock Refinery Employees are labor organizations, and Continental Employees Bargaining Association was a labor organization, within the meaning of Section 2 (5) of the Act.

2. The employees of the respondent at Big Muddy Field, excluding the production foreman and clerical employees, but including head roustabouts, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

3. Oil Workers International Union was in August 1935, and at all times thereafter has been, the exclusive representative of all employees in such unit for the purposes of collective bargaining, within the meaning of Section 9. (a) of the Act.

4. By refusing to bargain collectively with Oil Workers International Union as the exclusive representative of its employees in the appropriate unit, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (5) of the Act.

5. The production and maintenance employees of the respondent at its Glenrock Refinery, exclusive of supervisory and clerical employees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

6. Oil Workers International Union was, in August 1935, and at all times thereafter has been, the exclusive representative of all employees in such unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

7. By refusing to bargain collectively with Oil Workers International Union as the exclusive representative of the employees in the appropriate unit, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (5) of the Act.

8. By discriminating in regard to the hire and tenure of employment and the terms and conditions of employment of Ernest Jones and F. D. Moore, thereby discouraging membership in Oil Workers International Union, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (3) of the Act.

9. By dominating and interfering with the formation and administration of Independent Association of Conoco Glenrock Refinery Employees, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (2) of the Act.

10. By dominating and interfering with the formation of Continental Employees Bargaining Association, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (2) of the Act.

11. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

12. The unfair labor practices enumerated above are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

[fol. 76] 13. A question affecting commerce has arisen concerning the representation of the respondent's employees

at Salt Creek Field within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

14. The production employees of the respondent at Salt Creek Field, including head roustabouts but excluding the production foreman, the clerk, and employees engaged in the operation of the gas compression and reduction plant, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

15. The respondent did not, by refusing to bargain with the Union as the representative of its employees at Salt Creek Field, engage in unfair labor practices within the meaning of Section 8 (5) of the Act.

#### ORDER

Upon the basis of the above findings of fact and conclusions of law and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Continental Oil Company, Ponca City, Oklahoma, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Oil Workers International Union as the exclusive representative of all the employees of the respondent at Big Muddy Field, excluding the production foreman and clerical employees but including heard roustabouts, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Refusing to bargain collectively with Oil Workers International Union as the exclusive representative of the production and maintenance employees of the respondent at its Glenrock Refinery, exclusive of supervisory and clerical employees, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(c) Dominating or interfering with the administration of Independent Association of Conoco Glenrock Refinery Employees, or with the formation of Continental Employees Bargaining Association, or with the formation or administration of any other labor organization of its employees, [fol. 77] and from contributing support to said Associations or to any other organization of its employees;



(d) Discouraging membership in Oil Workers International Union or any other labor organization of its employees by transferring, discharging, or refusing to re-employ any of its employees, or in any other manner discriminating in regard to their hire or tenure of employment, or any term or condition of their employment;

(e) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid and protection as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request bargain collectively with Oil Workers International Union as the exclusive representative of all the employees of the respondent at Big Muddy Field, excluding the production foreman and clerical employees, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Upon request bargain collectively with Oil Workers International Union as the exclusive representative of the production and maintenance employees of the respondent at its Glenrock Refinery, exclusive of supervisory and clerical employees in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(c) In the event that Oil Workers International Union is selected in the election hereinafter directed as the representative of the employees in the appropriate unit at Salt Creek Field and is thereafter certified by this Board as the exclusive representative of such employees, then, upon request, bargain collectively with Oil Workers International Union as the exclusive representative of the production employees of the respondent at Salt Creek Field, including head roustabouts but excluding the production foreman, the clerk, and employees engaged in the operation of the gas compression and reduction plant, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

[fol. 78] (d) Withdraw all recognition from Independent Association of Conoco Glenrock Refinery Employees as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, hours of employment, and other conditions of employment, and completely disestablish Independent Association of Conoco Glenrock Refinery Employees as such representative;

(e) Withdraw all recognition from Continental Employees Bargaining Association as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, hours of employment, and other conditions of employment;

(f) Offer to Ernest Jones and F. D. Moore immediate and full reinstatement to the positions formerly held by them at Big Muddy Field or positions substantially equivalent thereto at said Field, without prejudice to their seniority, insurance, or other rights and privileges;

(g) Make whole Ernest Jones and F. D. Moore for any loss of pay or other pecuniary loss they may have suffered by reason of the respondent's acts by payment to each of them of a sum of money equal to that which he would normally have earned as wages during the period from the date of the termination of his employment to the date of the respondent's offer of reinstatement, less his net earnings during that period, deducting, however, from the amount otherwise due to each employee monies received by said employee during said period for work performed upon Federal, State, county, municipal, or other work relief projects and pay over the amounts so deducted to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work relief projects;

(h) Procure for F. D. Moore the restoration of insurance rights, which he lost upon the termination of his employment;

(i) Post immediately in conspicuous places throughout the plants involved and keep posted for at least sixty (60) consecutive days, notices stating [(1) that the respondent will cease and desist as aforesaid; (2) that the respondent will upon request bargain collectively as provided in 2 (a),

(b), and (c) above; (3) that the respondent withdraws all recognition of Independent Association of Conoco Glenrock Refinery Employees as a representative of any of its employees and completely disestablishes it as such representative;] (4) that the respondent withdraws all recognition of Continental Employees Bargaining Association as a representative of any of its employees;

(j) Notify the Regional Director for the Twenty-second Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply therewith.

And it is further ordered that the complaint be and it hereby is dismissed in so far as it alleges that the respondent by its refusal to bargain with the Union as the exclusive bargaining representative of its employees in an appropriate unit at Salt Creek Field, has engaged in unfair labor practices within the meaning of Section 8 (5) of the Act.

#### DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 1, as amended, it is hereby

Directed that, as part of the investigation authorized by the Board to ascertain representatives for the purposes of collective bargaining with Continental Oil Company, Ponca City, Oklahoma, an election by secret ballot shall be conducted within twenty (20) days from the date of this Direction, under the direction and supervision of the Regional Director for the Twenty-second Region, acting in this matter as agent for the National Labor Relations Board and subject to Article III, Section 9, of said Rules and Regulation, among the production employees of Continental Oil Company at Salt Creek Field, whose names appear upon the pay roll of the respondent next preceding the date of this direction including head roustabouts but excluding the production foreman, the clerk, and employees engaged in the operation of the gas compression and reduction plant, to determine whether or not they desire to be represented by Oil Workers International Union for the purposes of collective bargaining.



In the Matter of Continental Oil Company and Oil Workers International Union. Case No. C-627, R. 653.

[fol. 86]

BOARD'S EXHIBIT No. 2 (1)

BEFORE THE NATIONAL LABOR RELATIONS BOARD, 22ND REGION

In the Matter of CONTINENTAL OIL COMPANY and OIL WORKERS INTERNATIONAL UNION. XXII-C-4

### COMPLAINT

It having been charged by the Oil Workers International Union, hereinafter referred to as the Union, by F. T. Frisbey, District representative, 1128 East Tenth Street, Casper, Wyoming, that the Continental Oil Company, a corporation, hereinafter referred to as the Respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce, as set forth and defined in the National Labor Relations Act, Approved July 5, 1935, the National Labor Relations Board, by the Regional Director for the Twenty-second Region, as agent of the National Labor Relations Board, designated by National Labor Relations Board Rules and Regulations, Series 1, as amended, Article IV, Section 1, hereby issues its complaint and alleges the following:

#### I

The Respondent, Continental Oil Company, is and has been since October 8, 1920, a corporation organized under and existing by virtue of the laws of the State of Delaware, having its principal offices in Ponca City, Oklahoma, and New York, New York.

#### II

The Respondent, Continental Oil Company, and its subsidiaries, are engaged in the business of producing, refining,

[Board's Exhibit No. 2 (2)]

transporting and marketing petroleum and petroleum products throughout various states of the United States. In the course and conduct of its business, the Respondent produces crude petroleum from oil wells existing in the States of Okla-

homa, Kansas, Texas, New Mexico, Colorado, Utah, Montana, Wyoming, Arkansas, Louisiana, Arizona and California. The Respondent owns, operates and controls refineries for the manufacture of gasoline, kerosene, lubricating and burning oils, grease, wax and other petroleum products in Ponca City, Oklahoma; Baltimore, Maryland; [fol. 87] Wichita Falls, Texas; Florence, Colorado; Glen Rock, Wyoming; Denver, Colorado; Lewiston, Montana, and Albuquerque, New Mexico. The Respondent, in the course and conduct of its business, also owns, operates and controls 1,375 miles of pipe line in the States of Oklahoma, Kansas, Texas, New Mexico, Colorado and Montana. It further owns, operates and controls motor tank wagons, railway tank cars, storage tanks, booster stations, water terminals, car shops and other facilities for the purpose of transporting crude oil and refined products.

### III

The Respondent, in the State of Wyoming, is engaged in the production, refining, processing, manufacture, transportation and marketing of petroleum products. In the course of its operations in Wyoming, it owns, operates and exploits oil fields including the Big Muddy and Salt Creek Fields, and others.

### IV

In the course of its operations in its Wyoming fields, as aforesaid, the Respondent owns, operates and controls a gathering system of pipe lines, storage tanks and pump stations, to gather, receive and handle oil produced by the Respondent in its Wyoming oil fields. A preponderance of the crude oil thus produced, gathered, and transported in and between its Wyoming fields, and the products thereof, is

[Board's Exhibit No. 2 (3)]

shipped, transported and moved into states other than the State of Wyoming.

### V

In connection with its operations in the Salt Creek field, the Respondent owns, operates and controls a gas compression and reduction plant at Midwest, Wyoming. The preponderant portion of gasoline produced in this gas compression and reduction plant at Midwest, Wyoming, is sold and

transported by the Respondent from Midwest, Wyoming, to points outside of the State of Wyoming.

## VI

The operations of the Respondent in the State of Wyoming, as set forth above, are synchronized with the operations of the Respondent and its subsidiaries in other states of the United States and constitute an integral part of the [fol. 88] highly integrated system of the Respondent, devised for the purpose of providing through multifarious complex interdependent and interrelated operations extending through the United States, an efficient system for the production, processing and distribution of petroleum from the oil wells to the consumers who are located predominantly in states other than the State of Wyoming.

## VII

The production employees of the Respondent engaged in the production of crude oil and gas in its Salt Creek, Wyoming, field, exclusive of its employees engaged in its gas compression and reduction plant at Midwest, Wyoming, constitute a unit appropriate for the purposes of collective bargaining, in order to insure to the Respondent's employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of the National Labor Relations Act.

## VIII

On and before January 18, 1937, and at all times thereafter,

[Board's Exhibit No. 2 (4)]

a majority of the Respondent's employees in the said unit had designated the Oil Workers International Union as their representative for the purposes of collective bargaining with the Respondent. At all times since January 18, 1937, said Oil Workers International Union has been the representative for collective bargaining of a majority of the employees in said unit, and has, by virtue of Section 9(a) of said Act, been the exclusive representative of all employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.



## IX

At all times since January 18, 1937, and particularly since August 19, 1937, while the Respondent was engaged as described above, the Oil Workers International Union requested the Respondent through its officers, agents and employees to bargain collectively with respect of rates of pay, wages, hours of employment and other conditions of employment with said Oil Workers International Union as the exclusive representative of all the employees in said unit. On said dates and at all times thereafter the Respondent did re-[fol. 89] fuse and has refused to bargain collectively with the Oil Workers International Union, in that it did refuse and has refused to bargain with Oil Workers International Union as the exclusive representative of all the employees in said unit, and has refused to recognize the said Oil Workers International Union as the exclusive representative of all the employees in said unit.

## X

By its refusal to bargain collectively with the representatives of the majority of its employees in the said unit, the Respondent has engaged in and is engaging in an unfair labor practice within the meaning of Section 8, Subsection (5), of the National Labor Relations Act.

## XI

The Respondent, by its officers, agents and employees, on

[Board's Exhibit No. 2(5)]

or about April 27, 1936, while engaged as described above, did discharge Ernest Jones and D. F. Moore, employees of the Respondent, and has at all times since said date refused to reinstate said Ernest Jones and D. F. Moore.

## XII

The Respondent discharged and refuses to reinstate said Ernest Jones and D. F. Moore for the reason that said employees joined and assisted a labor organization known as International Oil Workers Union, and engaged in concerted activities with other employees of the Respondent for the purpose of collective bargaining and other mutual aid and protection.

## XIII

By its discharge of said Ernest Jones and D. F. Moore, and its refusal to reinstate said employees, as above set forth, the Respondent did discriminate and is discriminating in regard to the hire and tenure of employment of said Ernest Jones and D. F. Moore, and did discourage and is discouraging membership in Oil Workers International Union, and did thereby engage in and is thereby engaging in an unfair labor practice within the meaning of Section 8, Subsection (3), of said Act.

## XIV

The Respondent, by its officers and agents, and through [fol. 90] others acting directly or indirectly in the interests of the Respondent while engaged as described above, since May, 1937, down to and including the issuance of this complaint, has urged, threatened and persuaded its employees engaged in the production of crude oil and gas in its Salt Creek, Wyoming, field to organize and participate in the formation, operation and administration of an employee organization known as the Continental Employees Bargaining Association, and has given aid and support to the said Continental Employees Bargaining Association.

[Board's Exhibit No. 2 (6)]

## XV

The Respondent, by its officers and agents, and through others acting directly or indirectly in the interests of the Respondent while engaged as described above, since May, 1937, down to and including the issuance of this complaint, has urged, threatened and persuaded its employees engaged in its refinery at Glenrock, Wyoming, to organize and participate in the formation, operation and administration of an employee organization known as the Continental Refinery Employees Union of Glenrock, and has given aid and support to the said Continental Refinery Employees Union of Glenrock.

## XVI

The Respondent, by the acts set forth in paragraph XIV and XV above, and by other acts, has dominated and interfered with the formation and administration of a labor or-

ganization and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8, Subdivision (2); of the National Labor Relations Act.

### XVII

The Respondent by its acts described in paragraph IX to XVI, inclusive, and by other acts, did interfere with, restrain and coerce, and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of said Act, and did thereby engage in and is thereby engaging in an unfair labor practice within the meaning of Section 8, Subsection (1) of said Act.

### XVIII

The activities of the Respondent as set forth in paragraphs VII to XVII, inclusive, occurring in connection with the operations of the Respondent described in paragraphs [fol. 91] I to VI, inclusive, have a close, intimate and substantial relation to trade, traffic and commerce among the several states and with foreign countries, and tend to lead to labor disputes, burdening and obstructing commerce and the free flow of commerce.

[Board's Exhibit No. 2 (7)]

### XIX

The aforesaid acts of the Respondent constitute unfair labor practices affecting commerce within the meaning of Section 8, Subsections (1), (2); (3) and (5), and Section 2, Subsections (6) and (7) of said Act.

Wherefore, the National Labor Relations Board on the 14th day of February, 1938, issues this complaint against Continental Oil Company, the Respondent herein.

### Notice of Hearing

Please Take Notice that on the 24th day of February, 1938, at 10:00 o'clock in the forenoon at Council Chamber, City Hall, at Casper, Wyoming, a hearing will be conducted before the National Labor Relations Board by a trial examiner to be designated by it in accordance with its Rules and Regulations, Series 1 as amended, Article 4 and Article 2, Section 22 on the allegations set forth in the complaint



attached hereto, at which time and place you will have the right to appear in person or otherwise and give testimony.

You are further notified that you have the right to file with the Regional Director for the 22nd Region acting in this matter as the agent of the National Labor Relations Board an answer to the complaint attached hereto within five (5) days from the date of service of said complaint.

Enclosed herewith for your information is a copy of Rules and Regulations Series 1, as amended, made and published by the National Labor Relations Board pursuant to authority granted in the National Labor Relations Act.

In Witness Whereof the National Labor Relations Board has caused this its complaint and notice of hearing to be signed by the Regional Director for the 22nd Region on the 14th day of February, 1938.

Aaron W. Warner, Regional Director, 22nd Region,  
410 Central Savings Bank Building, Denver, Colorado. (Seal.)

[fol. 92]

BOARD'S EXHIBIT No. 1 (a)

BEFORE THE NATIONAL LABOR RELATIONS BOARD, 22ND REGION

In the Matter of Continental Oil Company and Oil Workers International Union. Case No. XXII C 4. Date filed February 12, 1938.

#### RE-AMENDED CHARGE

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Continental Oil Company, Columbine, Wyoming (Office in Denver, Colorado) has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (2), (3), (5) of said Act, in that said Company on or about May 12, 1937, and at all times thereafter attempted to organize an employee organization among the workers at the Salt Creek Field. On or about said date and at all times thereafter the Company has dominated and interfered with and has given support to said employee organization. The Company has also dominated and interfered with and has given support to an organization of its employees engaged at its refinery in Glenrock, Wyoming, said organization

being known as the Continental Refinery Employees Union of Glenrock.

It is further charged that on or about April 27, 1936, the company did discharge Ernest Jones and D. F. Moore because of their union activities and has since that date refused to reinstate said Ernest Jones and D. F. Moore.

It is further alleged that the employees of the Production Department at the Salt Creek, Wyoming, field of the Company, constituting a proper unit, have, by a majority of said employees, designated the Oil Workers International Union as their representative for the purposes of collective bargaining; that said Union has since January 18, 1937, frequently requested that the company bargain collectively with said Union; and that in spite of such requests and in spite of frequent attempts by the Union to furnish proof that it represented a majority of employees in the above described unit, the Company has at all times refused to bargain collectively or to recognize the Union as the chosen representative of the employees.

The undersigned further charges that said unfair labor [fol. 93] practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

Oil Workers International Union, F. T. Frisbey, District Representative, 1128 East Tenth St., Casper, Wyoming.

Subscribed and sworn to before me this 12th day of February, 1938, at Casper, Wyoming. David C. Shaw, Attorney.

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BOARD'S EXHIBIT No. 9

BEFORE THE NATIONAL LABOR RELATIONS BOARD, 22ND REGION

In the Matter of Continental Oil Company and Oil Workers International Union. Case No. XXII C 4. Date filed February 23, 1938.

## SECOND RE-AMENDED CHARGE

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Continental Oil Company, Ponca City, Oklahoma, has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (2), (3), (5), of said Act, in that said Company on or about May 12, 1937, and at all times thereafter attempted to organize an employees organization among the workers at the Salt Creek Field. On or about said date and at all times thereafter the Company has dominated and interfered with and has given support to said employee organization. The Company has also dominated and interfered with and has given support to an organization of its employees engaged at its refinery in Glenrock, Wyoming, said organization being known as the Continental Refinery Employees Union of Glenrock.

It is further charged that on or about April 27, 1936, the Company did discharge Ernest Jones and D. F. Moore because of their union activities and has since that date refused to reinstate said Ernest Jones and D. F. Moore.

[fol. 94] It is further alleged that the employees of the Production Department at the Salt Creek, Wyoming, field of the Company, constituting a proper unit, have, by a majority of said employees, designated the Oil Workers International Union as their representative for the purpose of collective bargaining; that said Union has since January 18, 1937, frequently requested that the Company bargain collectively with said Union; and that in spite of such requests and in spite of frequent attempts by the Union to furnish proof that it represented a majority of employees in the above described unit, the Company has at all times refused to bargain collectively or to recognize the Union as the chosen representative of the employees.

It is further alleged that the employees of the Company, employed as production employees at the Company's Big Muddy oil field at Parkerton, Wyoming, constitute a unit appropriate for the purpose of collective bargaining and that the production and maintenance employees at the Company's refinery at Glenrock, Wyoming, constitute a unit appropriate for the purposes of collective bargaining.

It is further alleged that since July 5, 1935, and at all times thereafter, the Oil Workers Union was the chosen representative of the majority of all workers in the above described classifications at the Big Muddy field and at the



Glenrock refinery and that in spite of this fact, well known to the Company the Company has, since July 5, 1935, and at all times thereafter refused to recognize and bargain with the said Union in good faith as the exclusive representative of the production and maintenance workers of the Big Muddy Field and the Glenrock refinery.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

Oil Workers International Union, F. T. Frisbey, District Representative, 1128 East Tenth St., Casper, Wyoming.

[fol. 95] Subscribed and sworn to before me this 23rd day of February, 1938, at Casper, Wyoming.  
David C. Shaw, Attorney.

[fol. 96] BOARD'S EXHIBIT No. 10 (1)

BEFORE THE NATIONAL LABOR RELATIONS BOARD, 22ND REGION

In the Matter of Continental Oil Company and Oil Workers International Union. XXII-C-4.

#### AMENDED COMPLAINT

It having been charged by the Oil Workers International Union, hereinafter referred to as the Union, by F. T. Frisbey, District representative, 1128 East Tenth Street, Casper, Wyoming, that the Continental Oil Company, a corporation, hereinafter referred to as the Respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce, as set forth and defined in the National Labor Relations Act, approved July 5, 1935, the National Labor Relations Board, by the Regional Director for the Twenty-second Region, as agent of the National [fol. 97] Labor Relations Board, designated by National Labor Relations Board Rules and Regulations, Series 1, as amended, Article IV, Section 1, hereby issues its complaint and alleges the following:

## I

The Respondent, Continental Oil Company, is and has been since October 8, 1920, a corporation organized under and existing by virtue of the laws of the State of Delaware, having its principal offices in Ponca City, Oklahoma, and New York, New York.

## II

The Respondent, Continental Oil Company, and its subsidiaries, are engaged in the business of producing, refining,

[Board's Exhibit No. 10 (2)]

transporting and marketing petroleum and petroleum products throughout various states of the United States. In the course and conduct of its business, the Respondent produces crude petroleum from oil wells existing in the States of Oklahoma, Kansas, Texas, New Mexico, Colorado, Utah, Montana, Wyoming, Arkansas, Louisiana, Arizona and California. The Respondent owns, operates and controls refineries for the manufacture of gasoline, kerosene, lubricating and burning oils, grease, wax and other petroleum products in Ponca City, Oklahoma; Baltimore, Maryland; Wichita Falls, Texas; Florence, Colorado; Glenrock, Wyoming; Denver, Colorado; Lewiston, Montana, and Albuquerque, New Mexico. The Respondent, in the course and conduct of its business, also owns, operates and controls 1,375 miles of pipe line in the States of Oklahoma, Kansas, Texas, New Mexico, Colorado and Montana. It further owns, operates and controls motor tank wagons, railway tank cars, storage tanks, booster stations, water terminals, car shops and other facilities for the purpose of transporting crude oil and refined products.

## III

The Respondent, in the State of Wyoming, is engaged in the production, refining, processing, manufacture, transportation and marketing of petroleum products. In the course of its operations in Wyoming, it owns, operates and exploits oil fields including the Big Muddy and Salt Creek fields, and others.

[fol. 98]

## IV

In the course of its operations in its Wyoming fields, as aforesaid, the Respondent owns, operates and controls a gathering system of pipe lines, storage tanks and pump stations, to gather, receive and handle oil produced by the Respondent in its Wyoming oil fields. A preponderance of the crude oil thus produced, gathered, and transported in and between its Wyoming fields, and the products thereof,

[Board's Exhibit No. 10 (3)]

is shipped, transported and moved into states other than the State of Wyoming. /

## V

In connection with its operations in the Salt Creek field, the Respondent owns, operates and controls a gas compression and reduction plant at Midwest, Wyoming. The preponderant portion of gasoline produced in this gas compression and reduction plant at Midwest, Wyoming, is sold and transported by the Respondent from Midwest, Wyoming, to points outside of the State of Wyoming.

## VI

The operations of the Respondent in the State of Wyoming, as set forth above, are synchronized with the operations of the Respondent and its subsidiaries in other states of the United States and constitute an integral part of the highly integrated system of the Respondent, devised for the purpose of providing through multifarious complex interdependent and interrelated operations extending through the United States, an efficient system for the production, processing and distribution of petroleum from the oil wells to the consumers who are located predominantly in states other than the State of Wyoming.

## VII

The production employees of the Respondent engaged in the production of crude oil and gas in its Salt Creek, Wyoming, field, exclusive of its employees engaged in its gas compression and reduction plant at Midwest, Wyoming, constitute a unit appropriate for the purposes of collective



bargaining, in order to insure to the Respondent's employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of the National Labor Relations Act.

[fol. 99]

### VIII

On and before January 18, 1937, and at all times there-

[Board's Exhibit No. 10 (4)]

after, a majority of the Respondent's employees in the said unit had designated the Oil Workers International Union as their representative for the purposes of collective bargaining with the Respondent. At all times since January 18, 1937, said Oil Workers International Union has been the representative for collective bargaining of a majority of the employees in said unit, and has, by virtue of Section 9(a) of said Act, been the exclusive representative of all employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

### IX

At all times since January 18, 1937, while the Respondent was engaged as described above, the Oil Workers International Union requested the Respondent through its officers, agents and employees to bargain collectively with respect of rates of pay, wages, hours of employment and other conditions of employment with said Oil Workers International Union as the exclusive representative of all the employees in said unit. On said dates and at all times thereafter the Respondent did refuse and has refused to bargain collectively with the Oil Workers International Union, in that it did refuse and has refused to bargain with Oil Workers International Union as the exclusive representative of all the employees in said unit, and has refused to recognize the said Oil Workers International Union as the exclusive representative of all the employees in said unit.

### X

By its refusal to bargain collectively with the representatives of the majority of its employees in said unit, said Respondent has engaged in and is engaging in an unfair labor

practice within the meaning of Section 8, Subsections (1) and (5) of the National Labor Relations Act.

[Board's Exhibit No. 10 (5)]

## XI

The production and maintenance employees of the Respondent engaged in the production of crude oil and gas in [fol. 100] the Respondent's Big Muddy, Wyoming, field at Parkerton, Wyoming, constitute a unit appropriate for the purposes of collective bargaining in order to insure to the Respondent's employees the full benefit of their right to self-organization and to collective bargaining and otherwise to effectuate the policies of the National Labor Relations Act.

## XII

On and before August 12, 1935, and at all times thereafter, a majority of the Respondent's employees in the said unit had designated the Oil Workers International Union as their representative for the purposes of collective bargaining with the Respondent. At all times since August 12, 1935, said Oil Workers International Union has been the representative for collective bargaining of a majority of the employees in said unit, and has, by virtue of Section 9(a) of said Act, been the exclusive representative of all employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

## XIII

At all times since August 12, 1935, while the Respondent was engaged as described above, the Oil Workers International Union requested the Respondent through its officers, agents and employees to bargain collectively with respect of rates of pay, wages, hours of employment and other conditions of employment with said Oil Workers International Union as the exclusive representative of all the employees in said unit. On said dates and at all times thereafter the Respondent did refuse and has refused to bargain collectively with the Oil Workers International Union, in that it did refuse and has refused to bargain with Oil Workers International Union as the exclusive representative of all the employees in said suit, and has refused to recognize the

## [Board's Exhibit No. 10 (6)]

said Oil Workers International Union as the exclusive representative of all the employees in said unit.

## XIV

By its refusal to bargain collectively with the representatives of the majority of its employees in the said unit, the Respondent has engaged in and is engaging in an unfair [fol. 101] labor practice within the meaning of Section 8, Subsections (1) and (5), of the National Labor Relations Act.

## XV

The production and maintenance employees of the Respondent engaged in the refining, treating and processing of crude petroleum at the Respondent's Glenrock, Wyoming, refinery, constitute a unit appropriate for the purposes of collective bargaining in order to insure to the Respondent's employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of the National Labor Relations Act.

## XVI

On and before August 12, 1935, and at all times thereafter, a majority of the Respondent's employees in the said unit had designated the Oil Workers International Union as their representative for the purposes of collective bargaining with the Respondent. At all times since August 12, 1935, said Oil Workers International Union has been the representative for collective bargaining of a majority of the employees in said unit, and has, by virtue of Section 9 (a) of said Act, been the exclusive representative of all employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

## XVII

At all times since August 12, 1935, while the Respondent was engaged as described above, the Oil Workers International Union requested the Respondent through its officers,

[Board's Exhibit No. 10 (7)]

agents and employees to bargain collectively with respect of rates of pay, wages, hours of employment and other con-



ditions of employment with said Oil Workers International Union as the exclusive representative of all the employees in said unit. On said dates and at all times thereafter the Respondent did refuse and has refused to bargain collectively with the Oil Workers International Union, in that it did refuse and has refused to bargain with Oil Workers International Union as the exclusive representative of all the employees in said unit, and has refused to recognize the said Oil Workers International Union as the exclusive representative of all the employees in said unit.

[fol. 102]

### XVIII

By its refusal to bargain collectively with the representatives of the majority of its employees in the said unit, the Respondent has engaged in and is engaging in an unfair labor practice within the meaning of Section 8, Subsections (1) and (5), of the National Labor Relations Act.

### XIX

The Respondent, by its officers, agents and employees, on or about April 27, 1936, while engaged as described above, did discharge Ernest Jones and D. F. Moore, employees of the Respondent, and has at all times since said date refused to reinstate said Ernest Jones and D. F. Moore.

### XX

The Respondent discharged and refuses to reinstate said Ernest Jones and D. F. Moore for the reason that said employees joined and assisted a labor organization known as International Oil Workers Union, and engaged in concerted activities with other employees of the Respondent for the purpose of collective bargaining and other mutual aid and protection.

### XXI

By its discharge of said Ernest Jones and D. F. Moore,

[Board's Exhibit No. 10 (8)]

and its refusal to reinstate said employees, as above set forth, the Respondent did discriminate and is discriminating in regard to the hire and tenure of employment of said Ernest Jones and D. F. Moore, and did discourage and is discouraging membership in Oil Workers International

Union, and did thereby engage in and is thereby engaging in an unfair labor practice within the meaning of Section 8, Subsection (3) of said Act.

### XXII

The Respondent, by its officers and agents, and through others acting directly or indirectly in the interests of the Respondent while engaged as described above, since May, 1937, down to and including the issuance of this complaint, has urged, threatened and persuaded its employees engaged in the production of crude oil and gas in its Salt Creek, Wyoming, field to organize and participate in the formation, operation and administration of an employee organization [fol. 103] known as the Continental Employees Bargaining Association, and has given aid and support to the said Continental Employees Bargaining Association.

### XXIII

The Respondent, by its officers and agents, and through others acting directly or indirectly in the interests of the Respondent while engaged as described above, since May, 1937, down to and including the issuance of this complaint, has urged, threatened and persuaded its employees engaged in its refinery at Glenrock, Wyoming, to organize and participate in the formation, operation and administration of an employee organization known as the Independent Association of Conoco Glenrock Refinery Employees, and has given aid and support to the said Independent Association of Conoco Glenrock Refinery Employees.

### XXIV

The Respondent, by the acts set forth in paragraphs XXII

[Bcard's Exhibit No. 10 (9)]

and XXIII above, and by other acts, has dominated and interfered with the formation and administration of a labor organization and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8, Subsection (2) of the National Labor Relations Act.

### XXV

The Respondent, by its acts described above in paragraphs IX to XXIV, inclusive, and by other acts, did inter-

fere with, restrain and coerce, and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of said Act, and did thereby engage in and is thereby engaging in an unfair labor practice within the meaning of Section 8, Subsection (1) of said Act.

## XXVI

The activities of the Respondent, as set forth above in paragraphs VII to XXV, inclusive, occurring in connection with the operations of the Respondent described above in paragraphs I to VI, inclusive, have a close, intimate and substantial relation to trade, traffic and commerce among the several states and with foreign countries, and tend to lead to labor disputes, burdening and obstructing commerce and the free flow of commerce.

[fol. 104]

## XXVII

The aforesaid acts of the Respondent constitute unfair labor practices affecting commerce within the meaning of Section 8, Subsections (1), (2), (3) and (5), and Section 2, Subsections (6) and (7) of said Act.

Wherefore, the National Labor Relations Board on the 25th day of February, 1938, issues this amended complaint against Continental Oil Company, the Respondent herein.

[Board's Exhibit No. 10 (10)]

### Amended Notice of Hearing

Please Take Notice that on the 3d day of March, 1938, at 10:00 o'clock in the forenoon at Council Chamber, City Hall, at Casper, Wyoming, a hearing will be conducted before the National Labor Relations Board by a trial examiner to be designated by it in accordance with its Rules and Regulations, Series 1 as amended, Article 4 and Article 2, Section 22 on the allegations set forth in the amended complaint attached hereto, at which time and place you will have the right to appear in person or otherwise and give testimony.

You are further notified that you have the right to file with the Regional Director for the 22nd Region, acting in this matter as the agent of the National Labor Relations Board, an answer to the amended complaint attached hereto



within five (5) days from the date of service of said amended complaint.

Enclosed herewith for your information is a copy of Rules and Regulations Series 1, as amended, made and published by the National Labor Relations Board pursuant to authority granted in the National Labor Relations Act.

In Witness Whereof the National Labor Relations Board has caused this, its amended complaint and amended notice of hearing, to be signed by the Regional Director for the 22nd Region on the 25th day of February, 1938.

Aaron W. Warner, Regional Director, 22nd Region,  
410 Central Savings Bank Building, Denver, Colorado. (Seal.)

[fol. 105] BOARD'S EXHIBIT No. 16 (1)

Before the National Labor Relations Board 22nd Region

[fol. 106] In the matter of Continental Oil Company and  
Oil Workers International Union. XXII-C-4.

#### ANSWER OF CONTINENTAL OIL COMPANY TO AMENDED COMPLAINT

Comes the respondent, Continental Oil Company, and alleging and insisting that the National Labor Relations Board is without jurisdiction in the matter purported to be covered by the amended complaint in this cause issued, and without waiving said want of jurisdiction, submits and files this its answer to said amended complaint.

1. Admits the allegations of Paragraph I of the amended complaint, except the allegation that this respondent has a principal office in New York, New York, which allegation this respondent denies.

2. As to the allegations of Paragraph II of the amended complaint, this respondent admits that it is engaged in the business of producing, refining, transporting and marketing petroleum and petroleum products throughout certain states in the United States, and also admits that certain subsidiaries of this respondent are engaged in one or more of said businesses in certain states of the United States. Admits that in the course of the conduct of its business this respondent

## [Board's Exhibit No. 16 (2)]

produces crude petroleum from oil wells existing in the states listed in said paragraph, with exception of the states of Utah, Arizona and Arkansas; and denies that this respondent produces crude petroleum in said last-mentioned states. Admits that this respondent owns, operates and controls refineries as listed in said paragraph, with the exception of Florence, Colorado, but alleges that the refinery in Montana is located in Lewistown, and not Lewiston. Admits that this respondent owns, operates or controls pipe lines in the states mentioned in said paragraph of the approximate, but not the exact, mileage in said paragraph stated. Admits that this respondent owns, operates and controls motor tank wagons and other facilities, as alleged in the last sentence in said paragraph. Denies all other allegations and inferences in said paragraph contained.

3. As to the allegations of Paragraph III of the amended complaint, admits that this respondent in the state of Wyoming is engaged in the production, refining, processing, [fol. 107] manufacture, transportation and marketing of petroleum products. Admits that in the course of its operations in Wyoming it owns certain leases and properties in Big Muddy and Salt Creek Fields, and other fields, and operates and exploits said oil fields; denies all other allegations in said paragraph.

4. As to the allegations of Paragraph IV of the amended complaint, respondent admits that in certain of the fields in which it operates in Wyoming it owns, operates and controls a gathering system of oil pipe lines, storage tanks and pump stations; but denies that it does so in the Salt Creek Field. Denies that this respondent owns, operates and controls any

## [Board's Exhibit No. 16 (3)]

gathering system of pipe lines, storage tanks and pump stations to gather, receive and handle oil produced by this respondent in its various Wyoming oil fields. Denies that any crude oil produced by this respondent in the Salt Creek Field or in the Big Muddy Field is shipped, transported and moved by the respondent into states other than the state of Wyoming. Admits that from time to time certain portions of the crude oil produced by this respondent from other

fields in which it operates in Wyoming, aggregating twenty to thirty per cent of the total amount so produced by this respondent, are shipped, transported and moved by this respondent into states other than the state of Wyoming. Admits that approximately two-thirds of the products from crude oil produced by this respondent in the state of Wyoming are shipped, transported and moved into states other than the state of Wyoming. Denies all other allegations in said paragraph IV.

5. Admits the allegations of Paragraph V of the amended complaint, except alleges that the location of said gas compression and reduction plant is at Columbine, Wyoming, and not at Midwest, Wyoming.

6. Respondent denies each and every allegation in Paragraph VI of the amended complaint, and alleges that the respondent's operations in the state of Wyoming are conducted primarily to satisfy the requirements of the business of respondent carried on in the state of Wyoming, and that only the surplus of the crude oil produced by the respondent in Wyoming and the products thereof not necessary to satisfy the requirements of this respondent's operations in Wyoming are shipped, transported and moved into states other than the state of Wyoming.

[Board's Exhibit No. 16 (4)]

7. Respondent denies each and every allegation in Paragraph VII of the amended complaint. Respondent alleges that a unit of its employees in its Salt Creek, Wyoming, Field appropriate for the purposes of collective bargaining includes its employees engaged in its gas compression and reduction plant located in Columbine, Wyoming, as well as its other production employees in said Salt Creek, Wyoming, Field; and further alleges that said gas compression and reduction plant is located at Columbine, Wyoming, and not at Midwest, Wyoming, as stated in Paragraph VII.

8. As to the allegations of Paragraph VIII of the amended complaint, this respondent again denies that its production employees engaged in the production of crude oil and gas in its Salt Creek, Wyoming, Field, exclusive of its employees engaged in its gas compression and reduction plant at Columbine, Wyoming, constitute a unit appropriate for the purpose of collective bargaining, and again



alleges and shows that a unit appropriate for the purposes of collective bargaining of its employees in said Salt Creek, Wyoming, Field includes the employees engaged in its gas compression and reduction plant in said field, as well as its other production employees in said field. This respondent further alleges that if the words, "said unit," in the second and third lines of said Paragraph VIII of the amended complaint are intended to refer to the production employees of this respondent in said Salt Creek, Wyoming, Field, exclusive of its employees engaged in its gas compression and reduction plant in said field, this respondent is without knowledge as to whether a majority of this respondent's said employees on and before January 18,

[Board's Exhibit No. 16 (5)]

1937, and at all times thereafter, or at any time, had designated the Oil Workers International Union as their representative for the purpose of collective bargaining with this respondent.

Further answering said Paragraph VIII of the amended complaint, respondent alleges that no evidence or proof has been submitted or furnished to this respondent showing that at all times or at any time since January 18, 1937, the said [fol. 109] Oil Workers International Union has been the representative for collective bargaining of a majority of the employees of this respondent in the Salt Creek, Wyoming, Field, either inclusive or exclusive of respondent's employees engaged in its gas compression and reduction plant at Columbine, Wyoming.

Still alleging and contending that the appropriate unit of this respondent's employees in the Salt Creek, Wyoming, Field for collective bargaining purposes includes its employees engaged in its gas compression and reduction plant at Columbine, Wyoming, as well as its other production employees in said Salt Creek Field, this respondent further alleges and shows that if it should properly be considered that the production employees of the respondent engaged in the production of crude oil and gas in said Salt Creek, Wyoming, Field, exclusive of its employees engaged in its gas compression and reduction plant at Columbine, Wyoming, constitute a unit for the purpose of collective bargaining with respondent, this respondent is without knowl-

edge whether at all times, or at any time since January 18, 1937 said Oil Workers International Union has been the representative for collective bargaining of a majority

[Board's Exhibit No. 16 (6)]

of said employees, and has by virtue of Section 9 (a) of said Act been the exclusive representative of all employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment. Denies each and every other allegation in said Paragraph VIII.

9. As to the allegations of Paragraph IX of the amended complaint, this respondent admits that from time to time the Oil Workers International Union made certain representations to this respondent claiming that it had been designated as the representative for collective bargaining purposes of the production employees of this respondent in the Salt Creek, Wyoming, Field, exclusive of the employees of this respondent engaged in its gas compression and reduction plant at Columbine, Wyoming; but said Oil Workers International Union at no time submitted any evidence or proof to this respondent as to what employees of this respondent, if any, it had been so designated to represent. This respondent further alleges and shows, as hereinabove [fol. 110] stated, that the appropriate unit for collective bargaining purposes of this respondent's employees in its Salt Creek, Wyoming, Field includes its employees in its gas compression and reduction plant at Columbine, Wyoming, as well as all other production employees of this respondent in said Salt Creek, Wyoming, Field, and that at no time did said Oil Workers International Union claim or submit evidence that it represented a majority of this respondent's employees in such unit. This respondent alleges upon information and belief that said Oil Workers International Union does not now and at no time has been designated by a majority of this respondent's employees in such unit as their representative for collective bargain-

[Board's Exhibit No. 16 (7)]

ing purposes in such unit. Respondent further alleges that under date of May 14, 1937, twenty-one employees, being a majority of respondent's employees in said field, notified respondent that they had organized themselves as a

group for collective bargaining purposes. This respondent denies that it has refused to bargain collectively with its employees in said Salt Creek, Wyoming, Field who claim to be or were represented to be members of said Oil Workers International Union, but admits that it has refused to bargain with said Oil Workers International Union as the exclusive representative of all its employees in the Salt Creek, Wyoming, Field and has refused to recognize said Oil Workers International Union as the exclusive representative of all of this respondent's employees in said Salt Creek, Wyoming, Field, for the reasons hereinabove stated.

10. Respondent denies each and every allegation in Paragraph X of the amended complaint.

11. As to the allegations of Paragraph XI of the amended complaint, respondent alleges that it is without knowledge as to what employees are intended to be included within the designation, "production and maintenance employees," as used in said paragraph. Respondent further alleges that all employees of this respondent engaged in the production of crude oil and gas in respondent's Big Muddy, Wyoming, Field constitute a unit appropriate for the purposes of collective bargaining; denies each and every other allegation in said Paragraph XI.

12. As to the allegations of Paragraph XII of the [fol. 111] amended complaint, respondent alleges that it is without knowledge as to whether at any time a majority of this respondent's employees engaged in the production of crude oil and gas in this respondent's Big Muddy, Wyoming, Field, designated the Oil Workers International Union as their representative for the purposes of collective bargaining with respondent; and alleges that it is without

[Board's Exhibit No. 16 (8)]

knowledge as to whether at any time since August 12, 1935, said Oil Workers International Union has been designated as the representative for collective bargaining of a majority of the employees of this respondent in said field. Respondent specifically alleges that it is without knowledge as to whether at the present time or at any time since the month of June, 1937 the said Oil Workers International Union has been designated as a representative for the purpose of collective bargaining of a majority of the employees of this



respondent in said Big Muddy Field. And this respondent further alleges upon information and belief that at the present time and at all times since the month of June, 1937 an organization of this respondent's employees in said Big Muddy Field known as the Association of Continental Oil Company Employees, Big Muddy Field, has been designated by a majority of this respondent's employees in said field as the representative of this respondent's employees in said field for collective bargaining purposes. Denies each and every other allegation in said Paragraph XII.

13. This respondent denies each and every allegation in Paragraph XIII of the amended complaint, and alleges that at no time has any proof or evidence been submitted to this respondent that the Oil Workers International Union represented any of the employees of this respondent in the Big Muddy Field. Respondent further alleges that prior to the month of May or June, 1937, an organization known as the International Association of Oil Field, Gas Well and Refinery Workers of America had been designated by a majority of this respondent's employees in said Big Muddy Field as their representative and that while so designated this

[Board's Exhibit No. 16 (9)]

respondent dealt with said organization as such representative in all matters submitted to it by said organization in behalf of its said employees. This respondent further [fol. 112] alleges that in the summer of 1937 it was notified that a majority of this respondent's employees in said Big Muddy Field has designated an organization referred to above known as the Association of Continental Oil Company Employees, Big Muddy Field, as their representative for collective bargaining purposes with this respondent, and at all times since said Association of Continental Oil Company Employees, Big Muddy Field, has claimed to be the exclusive representative for collective bargaining purposes of this respondent's employees in said Big Muddy Field.

Denies each and every other allegation in said Paragraph XIII.

14. Denies each and every allegation in Paragraph XIV in the amended complaint.

15. As to the allegations of Paragraph XV of the amended complaint, this respondent alleges that it is without knowl-

edge as to what employees of this respondent at its, Glenrock, Wyoming, refinery are intended to be included within the designation, "production and maintenance employees," as those words are used in said paragraph. This respondent alleges that all employees of this respondent at its Glenrock, Wyoming, refinery constitute a unit appropriate for the purpose of collective bargaining in order to insure to said employees the full benefit of their right to self-organization and to collective bargaining and otherwise to effectuate the policies of the National Labor Relations Act.

16. As to the allegations of Paragraph XVI of the  
[Board's Exhibit No. 16 (10)]

amended complaint, respondent alleges that it is without knowledge as to whether on or before August 12, 1935, or at any time theretofore or thereafter, a majority of respondents' employees at its Glenrock refinery had designated the Oil Workers International Union as their representative for collective bargaining purposes with this respondent. And respondent alleges that it is without knowledge as to whether said Oil Workers International Union has been the representative for collective bargaining in behalf of the employees of this respondent at its Glenrock refinery at any time. This respondent further alleges and shows that at all times since not later than the 6th day of August, 1937 an organization of this respondent's employees at its Glenrock refinery known as the Independent Association of Conoco Glenrock Refinery Employees [fol. 113] has been designated by a majority of the employees of this respondent at said refinery as their representative for collective bargaining purposes with this respondent and has since said time been, and at the present time is, the exclusive representative of all of said refinery employees for the purposes of collective bargaining with this respondent. Denies each and every other allegation in said Paragraph XVI.

17. As to the allegations of Paragraph XVII of the amended complaint, respondent realleges, as hereinabove alleged with reference to said Oil Workers International Union, and again alleges that it is without knowledge that the Oil Workers International Union was ever designated by a majority of this respondent's employees at said re-

finery as their representative for collective bargaining purposes; denies that this respondent has ever refused any

[Board's Exhibit No. 16 (11)]

request of said Oil Workers International Union to bargain collectively with reference to said employees, but admits that since the 6th day of August, 1937 it has refused to recognize said Oil Workers International Union as the exclusive representative of all of this respondent's employees at said refinery, and alleges, as hereinabove stated, that at all times since said 6th day of August, 1937 it has been informed and has believed, and is still so informed and believes, that said Independent Association of Conoco Glenrock Refinery Employees has been and still is designated by a majority of this respondent's employees at said refinery as their representative for collective bargaining purposes. This respondent, therefore, further alleges upon information and belief that at the present time and at all times not later than August 6, 1937, the said Independent Association of Conoco Glenrock Refinery Employees is and has been the exclusive representative of all the employees of this respondent at said refinery for collective bargaining purposes. Denies each and every other allegation in said Paragraph XVII.

18. Denies each and every allegation in Paragraph XVIII of the amended complaint.

19. As to the allegations of Paragraph XIX of said amended complaint, respondent alleges that said Ernest [fol. 114] Jones and D. F. Moore were employees of this respondent in its Big Muddy, Wyoming, Field, prior to April 27, 1936, and alleges that at or about said time this respondent, in the course of the conduct of its business, elected to transfer (along with other employees being then transferred) said Ernest Jones and D. F. Moore to other oil fields then being operated by this respondent; that said

[Board's Exhibit No. 16 (12)]

transfer of the said D. F. Moore was, upon the request of the said D. F. Moore, withdrawn, but the said D. F. Moore refused to further continue in the employ of this respondent and voluntarily quit such employment. This respondent further shows that the said Ernest Jones refused to



accept said transfer, and thereupon the employment of said Ernest Jones with this respondent was terminated. Denies each and every other allegation in said Paragraph XIX.

20. Denies each and every allegation in Paragraph XX of the amended complaint.

21. Denies each and every allegation in Paragraph XXI of the amended complaint.

22. Denies each and every allegation in Paragraph XXII of the amended complaint.

23. Denies each and every allegation in Paragraph XXIII of the amended complaint.

24. Denies each and every allegation in Paragraph XXIV of the amended complaint.

25. Denies each and every allegation in Paragraph XXV of the amended complaint.

26. Denies each and every allegation in Paragraph XXVI of the amended complaint.

Respondent further alleges and shows that the operations and business by it conducted and carried on in the Salt Creek Field in the state of Wyoming and referred to in the amended complaint herein issued do not constitute or affect commerce within the meaning of the National Labor Relations Act, and the National Labor Relations Board has no power or jurisdiction in this cause, except to so find and dismiss said amended complaint.

[fol. 115] [Board's Exhibit No. 16 (13)]

Respondent further alleges and shows that the operations and business by it conducted and carried on in the Big Muddy Field in the state of Wyoming and referred to in the amended complaint herein issued do not constitute or affect commerce within the meaning of the National Labor Relations Act and the National Labor Relations Board has no power or jurisdiction in this cause, except to so find and dismiss said amended complaint.

Respondent further alleges and shows that the operations and business by it conducted and carried on in its refinery at Glenrock, Wyoming, and referred to in the amended complaint herein issued do not constitute or affect commerce within the meaning of the National Labor Relations Act,

and the National Labor Relations Board has no power or jurisdiction in this cause, except to so find and dismiss said amended complaint.

27. Denies each and every allegation in Paragraph XXVII of the amended complaint.

Respectfully submitted, Continental Oil Company, by  
(Sgd.) Walter Miller, Its Vice President, Respondent, Continental Oil Building, Denver, Colorado.;  
(Sgd.) John R. Moran, Continental Oil Building, Denver, Colo.; (Sgd.) John P. Akolt, 1300 Telephone Building, Denver, Colo., Attorneys for Respondent.

[Board's Exhibit No. 16 (14)]

*Duly sworn to by Walter Miller. Jurat omitted in printing.*

[fol. 116] BEFORE NATIONAL LABOR RELATIONS BOARD

#### ORAL AMENDMENT TO AMENDED COMPLAINT

VI-A. The Oil Workers International Union is a labor organization organized and existing for the purposes of representing employees in the petroleum and allied industries in collective bargaining negotiations covering rates of pay, wages, hours of employment and other conditions of employment with employers of labor. Prior to June 12, 1937, this organization went under the name and designation of The International Association of Oil Field, Gas Well and Refinery Workers of America. Where the name "Oil Workers International Union" appears hereinafter in the following paragraphs of this complaint, it shall refer to, include and be synonymous with the name "The International Association of Oil Field, Gas Well and Refinery Workers of America."

(Page 1126 Vol. II of Transcript.)

**BOARD'S EXHIBIT No. 16B (1)**

**BEFORE THE NATIONAL LABOR RELATIONS BOARD, 22ND REGION**

**In the matter of Continental Oil Company and Oil Workers International Union. XXII-C-4.**

**ANSWER OF RESPONDENT TO AMENDMENT TO AMENDED  
COMPLAINT**

Comes now the respondent, Continental Oil Company, and without waiving but still insisting upon its objections to the filing of the Amendment to the Amended Complaint, which objections were dictated into and appear in the record of the hearing of this cause, and which amendment was [fol. 117] permitted to be dictated orally by counsel for the Board into the record of said hearing as paragraph VI-A of said amended complaint, and for its answer to said amendment:

1. Alleges that it is without knowledge as to whether The Oil Workers International Union is a labor organization organized and existing for the purposes set forth in said paragraph VI-A.

2. Alleges that it is without knowledge as to whether The Oil Workers International Union prior to June 12, 1937, or at any time, went under the name and designation of The International Association of Oil Field, Gas Well and Refinery Workers of America. Respondent is informed and believes and alleges upon such information and belief that

**[Board's Exhibit No. 16B (2)]**

said two organizations are entirely separate and distinct entities and unions and are not one and the same organization or union. Respondent further alleges and shows that at no time did the Oil Workers International Union attempt to bargain with this respondent in behalf of any employees of this respondent in the State of Wyoming or make any claim to this respondent that it represented any employees of this respondent for collective bargaining purposes and also no employees of this respondent in the State of Wyoming at any time ever claimed or represented to this respondent that any union or organization known as Oil Workers International Union had been designated to represent them for collective bargaining purposes with this respondent.



3. Denies each and every other allegation in said paragraph VI-A contained.

Respectfully submitted: Continental Oil Company,  
by Walter Miller, Its Vice President; John R.  
Moran, Continental Oil Bldg., Denver, Colorado;  
John P. Akolt, 1300 Telephone Bldg., Denver, Colo-  
rado, Attorneys for Respondent.

[fol. 118] *Duly sworn to by Walter Miller. Jurat omitted in printing.*

#### BEFORE NATIONAL LABOR RELATIONS BOARD

#### INTERMEDIATE REPORT

Upon charge duly made, and acting pursuant to authority granted in Section 10(b) of the National Labor Relations Act, 49 Stat. 449. Aaron W. Warner, Regional Director for the Twenty-second Region, agent of the National Labor Relations Board, acting pursuant to its Rules and Regulations, Series 1, as amended, Article II, Section 5, issued its complaint dated the 14th day of February 1938, against the Continental Oil Company, the respondent herein. The complaint and notice of hearing were duly served upon the respondent on the 14th day of February 1938 in accordance with its Rules and Regulations, Series 1, as amended, Article II, Section 5. Thereafter there was an amended complaint served on the respondent the 25th day of February 1938.

For the purposes of hearing, the present case was consolidated with Case No. XXII-R-5.

At the hearing a motion to amend the complaint by counsel for the Board was granted whereby the name "Oil Workers International Union" shall refer to include and be synonymous with the name "The International Association of Oil Field, Gas Well and Refinery Workers of America." In the present report, the term "Union" wherever used shall refer to the Oil Workers International Union as defined above.

### The Pleadings

After the formal allegations concerning the nature of the [fol. 119] respondent's business, the complaint, as amended, alleged as follows:

(a) With reference to respondent's operations at the Salt Creek, Wyoming, field, it is alleged that on and before January 18, 1937, and at all times thereafter, a majority of the employees engaged in the production of crude oil and gas; exclusive of those engaged in the gas plant, constituting a unit appropriate for the purposes of collective bargaining, had designated the Union as their representative. It is further alleged that at all times since January 18, 1937, the respondent upon request has refused to bargain collectively with the Union as the exclusive representative of the employees in the above-defined unit.

(b) With reference to respondent's operations at the Big Muddy field, Parkerton, Wyoming, it is alleged that on and before August 12, 1935, and at all times thereafter, a majority of the production and maintenance employees engaged in the production of crude oil and gas, constituting a unit appropriate for the purposes of collective bargaining, had designated the Union to represent them. It is further alleged that at all times since August 12, 1935, the respondent upon request has refused to bargain collectively with the Union as the exclusive representative of the employees in the above-defined unit.

(c) With reference to respondent's operations at its Glenrock, Wyoming, refinery, it is alleged that on and before August 12, 1935, and at all times thereafter a majority of the production and maintenance employees, constituting a unit appropriate for the purposes of collective bargaining, had designated the Union to represent them. It is further alleged that at all times since August 12, 1935, the respondent, upon request, has refused to bargain collectively with the Union as the exclusive representative of the employees in the above-defined unit.

(d) With further reference to respondent's operations at the Salt Creek field and the Glenrock refinery, it is alleged that the respondent has urged, threatened, and persuaded its employees to organize and participate in the formation, operation and administration of certain labor organizations

and has given aid and support to them. These allegations relate to the Continental Employees Bargaining Association, hereafter called the Association, at Salt Creek, and the [fol. 120] Independent Association of Conoco Glenrock Refinery Employees, hereafter called the Independent, at the Glenrock refinery.

(e) With reference to Ernest Jones and F. D. Moore, it is alleged that the respondent discharged and refused to reinstate them on or about April 27, 1938, because of their union activity.

Thereafter respondent filed its answer.

(a) The appropriateness of the bargaining unit at Salt Creek set up in the complaint is denied in the answer, it being alleged that the gas plant should be included. It is further alleged that the respondent has no knowledge as to whether the Union was designated as alleged. The refusal to bargain alleged in the complaint is admitted in the answer which alleges that under date of May 14, 1937, a majority of respondent's employees at the Salt Creek field notified it that they had organized themselves as a group for collective bargaining purposes.

(b) The answer alleges that prior to May or June 1937, the Union was designated by a majority of respondent's employees in Bug Muddy field and that the respondent dealt with it as such. It is further alleged in the answer that in the summer of 1937 respondent was notified that a majority of its employees in Big Muddy field had designated the Association as their representative for purposes of collective bargaining with the respondent and that at all times since, the Association has claimed to be the exclusive representative of such.

(c) It is alleged in the answer that the respondent is without knowledge as to whether the Union was ever designated by a majority of respondent's employees at its Glenrock refinery as their representative for collective bargaining purposes with the respondent and that at all times since August 6, 1937, the Independent has been designated as the exclusive representative of these employees.

(d) The allegations in the complaint concerning the activities of the respondent with reference to the Association and the Independent are denied in the answer.



(e) With reference to Ernest Jones and F. D. Moore the answer alleges that the respondent in the course and conduct of its business elected to transfer them to other fields then being operated by it; that the transfer of F. D. Moore upon his request was withdrawn and that he voluntarily quit his employment with the respondent, and that Ernest Jones refused to accept the transfer and his employment was thereupon terminated.

The answer concludes with allegations to the effect that the National Labor Relations Board is without jurisdiction so far as the operations at Big Muddy field, Salt Creek field and the Glenrock refinery are concerned, except to so find and dismiss the amended complaint.

### The Hearing

Pursuant to notice of hearing, the undersigned as Trial Examiner of the National Labor Relations Board designated to conduct hearings in this case, conducted a hearing on March 3, 4, 5, 7, 8, 9, 10, 11, 12, 14, 15, 16, and 17, 1938, at Casper, Wyoming. The respondent appeared by John R. Moran and John P. Akolt. Full opportunity to be heard, to examine and cross-examine witnesses, and to produce evidence bearing upon the issues, was afforded to the parties.

At the opening of the hearing and at its conclusion there was a motion by the respondent that the proceedings be dismissed. In both instances the motion was denied.

Upon the record as thus made, the stenographic report of the hearing and all the evidence, including oral testimony, observation of the witnesses, documentary and other evidence received at the hearing, the undersigned makes, in addition to the above, the following specific findings of fact.

### Findings of Fact

#### I. The Respondent and its Business

1. The respondent, the Continental Oil Company is and has been since October 8, 1920, a corporation organized under and existing by virtue of the laws of the State of Delaware having its principal offices in Ponca City, Oklahoma. With its subsidiaries, it is engaged in the business of producing, refining, transporting and marketing petroleum and petroleum products.

2. The only properties involved in the present case are located in the State of Wyoming. They are the Glenrock [fol. 122] refinery and certain producing units at the Salt Creek and Big Muddy fields. The refinery at Glenrock, Wyoming, handles approximately 2,500 barrels of oil daily. There are approximately 80 men employed. At the Salt Creek field there are approximately 40 men employed in the operations of the respondent, which include 110 oil wells and a gas plant. The total daily production of the wells approximates 1,000 barrels. The gas plant, employing about 10 men, is involved in 85 per cent of this production, drawing the natural gas from the wells for the purpose of drying it and removing gasoline from it. The dry gas is then returned to different locations on the field to be used as fuel for the pumps, for heating purposes, and for domestic fuel.

3. Salt Creek field in its entirety is approximately 11 miles long, north and south, and 6 miles wide, east and west. The properties of the respondent are located for about 6 miles along the eastern edge of the field and in the southern portion, being some 4 miles across. (Respondent Exhibit No. 11) This field is approximately 40 miles north of Casper, while Glenrock is about 14 miles east of Casper. Big Muddy field, which is 6 miles long, east and west, and 3 miles wide, north and south, is within 2 or 3 miles of Glenrock. At Big Muddy field the total daily production approximates 1200 barrels and there are approximately 30 men employed.

4. At Big Buddy field and at Salt Creek, the nature of the work done by the men in the field is similar. At Big Muddy, however, there is no gas plant. The gas which is drawn from the wells is pumped out to the points where it is used without any change being made in its character or content. There is no special crew for the operation. It is handled by the pumpers.

5. The two principal classes of work in the oil fields here involved are pumpers and roustabouts. Pumpers are classified as pumpers or relief pumpers, and roustabouts are classified as roustabouts or head roustabouts. A pumper is assigned to a certain number of wells and it is his job to keep them in operation. In this connection he must take care of his engines and his storage tanks and keep his wells in running condition. A relief pumper is shifted from loca-

tion to location to take charge of the different wells when the regular pumpers have time off. The roustabouts work in crews of from two to five, and it is their function to keep [fol. 123] the wells, pumps, engines, tanks, pipe lines and other equipment in operating condition. The man in charge of a crew, whose duties are in the nature of those of a gang boss, is known as the head roustabout, or gang pusher.

6. To some extent the roustabouts from the gas plant and in the field at Salt Creek have over-lapping duties. Either crew may be assigned to work on gas lines. On the other hand, the gas plant roustabouts normally would be responsible for the work in and around the gas plant. At the plant there are operators who are responsible for keeping the gas plant equipment in operation. To some extent, their duties are similar to those of the pumpers in that both jobs involve the operation of gas engines, but operators receive \$5 more per month than pumpers for the same number of hours. (Resp. Exhibits Nos. 9-n and 21)

7. The gas plant is located at the southern end of the eastern side of the Salt Creek field. Prior to 1930 it was owned by another company on which the respondent company was dependent for its service. At the present time 15 per cent of the production is not from wells serviced by the gas plant. These wells are serviced by other companies which have gas plants more readily accessible to these particular wells.

8. The men employed at Salt Creek field live in the vicinity of their pumps if they are regular pumpers, houses being furnished for this purpose. At the gas plant there are living quarters and at the time of the hearing, two men from the field were living there. In addition there are two "camps." Home Camp, where the field office is located, is approximately 2 miles west of the gas plant and a smaller camp is about 2 miles to the north of the gas plant.

## II. Unfair Labor Practices

9. In July 1934 pursuant to petitions filed, elections were held by the Petroleum Labor Policy Board at the refinery and at Salt Creek and Big Muddy fields. The Union, at that time being the Oil Field, Gas Well and Refinery Workers of America, had one local at Salt Creek and one local which took into membership employees at Big Muddy



and at the refinery. As certified to the parties by the Petroleum Labor Policy Board, the majority of the men at Salt Creek voted for "an employees' representation plan." [fol. 124] (Board Exhibit No. 119.) The employees of the "Oil Field Production" and of the "Gas Plant" were included in a single unit. One of the employees certifying for "the employees' representation plan" (although there was then none in existence) that the election was held in a "fair and impartial manner" was Jack Hainworth. The record does not disclose how he was chosen to act.

10. At Big Muddy and at the refinery the results of the election as certified showed substantial majorities favoring the Union. (Board Exhibit No. 25) One of the employees certifying for "the plan of joint representation of employees and management" at the refinery (although there was then none in existence) that the election was held in a "fair and impartial manner" was C. E. Martin.

11. Following the certification of the results of the election at the Big Muddy field there was circulated a petition requesting a new election. To some extent, the circulation of this petition was effected by J. G. Dyer, who at the time of the hearing in this case was manager of production east of the Rocky Mountains for the respondent. So far as the record discloses, Mr. Dyer, at the time the petition was circulated, was head of the pipe-line department of the respondent and was not employed in the Big Muddy field. On August 2, 1934, the petition was forwarded to the Petroleum Labor Policy Board and was denied (Bd. Ex. No. 58).

12. In October 1934 the Union submitted a complaint to the Petroleum Labor Policy Board alleging the discriminatory discharge of certain employees at the refinery and the attempted imposition of a "company union" upon the employees. After hearing, in November 1934, the Petroleum Labor Policy Board issued its decision on February 21, 1935, in which it finds that "no violation of the law is established" but in which it reminds "the Company and the Union" that the Union is "the duly authorized representative, for purposes of collective bargaining" at the refinery. (Resp. Exh. No. 1)

#### A. Refusal to Bargain at Big Muddy Field

13. In August of 1934 Albert D. Shipp, District Representative for the Union, together with a Union committee of

the employees from Big Muddy presented to Mr. Thomas, District Superintendent of production, a proposed agreement. (Board Exh. No. 26) Mr. Thomas stated at that time that he had no authority to act, but that he would refer the [fol. 125] proposed agreement to higher representatives of the respondent. Thereafter, on September 17, the committee, including Mr. Shipp met with Mr. Shannon, General Superintendent of the Rocky Mountain Division, Production Department. Mr. Shannon read from a draft of the document which appears in evidence as Board Exhibit No. 27. This is addressed to the "Committee of Continental Employees." Mr. Shipp made specific objection to the fact that the document was not directed to the Union, but Mr. Shannon stated that he had no authority to make any changes and that it was to go in effect as written.

14. This document dated September 18, 1934, is written on the stationery of the Continental Oil Company and is signed by E. S. Shannon, General Superintendent, Rocky Mountain Division. It is addressed to Messrs. Ernest Jones, E. L. Simon, A. K. Shafer, Committee of Continental Employees, Big Muddy Field, Wyoming. The opening paragraph begins as follows:

"In confirmation of our discussions today, this will outline our understanding of the working conditions which it is the intention of Continental Oil Company to have in effect in the Big Muddy District until such time as we have given thirty days' notice of our intention to change them."

15. Such recognition as is given to the principle of seniority is qualified by "taking into account ability and efficiency" and by granting to the respondent the absolute right "to promote any individual for unusually meritorious service or exceptional ability." The disposition of grievances is in the last analysis in the hands of the "president of the company" without recourse. One of the concluding paragraphs reads as follows:

"No understanding between the company and any association of employees shall be considered binding upon employees not members of such association."

16. On March 22, 1935, Shipp wrote to Shannon requesting a meeting "to work out a contract that can be mutually agreed upon," and requesting also an opportunity to dis-

cuss the matter of differentials under the N. R. A. Pursuant to this request a meeting with the Union committee was held in April. The respondent was represented by Mr. Shannon, Mr. Thomas, and Mr. Bartels. Bartels at that [fol. 126] time was Production Foreman at Big Muddy. The net result of the meeting was a refusal by the respondent to depart from the conditions outlined in the letter of September 18, to recognize the Union as representing the employees at Big Muddy, or to pay the rate differentials provided for under the N. R. A.

17. In July of 1935, after the enactment of the National Labor Relations Act, there was circulated at Big Muddy a petition authorizing the Union—Local 242—to represent the employees. This petition (Board Exh. No. 29) bears the signatures of 28 employees then on the respondent's pay roll at Big Muddy. The total number of employees was 38, including Mr. Thomas and Mr. Bartels. (Resp. Exh. No. 2.)

18. A conference "to begin negotiations to work out a collective bargain" was requested of the respondent by letter dated August 12, 1935, and signed by Albert Shipp and the employee members of the committee, who were F. D. Moore, Ernest Jones, and Everett Simon. The letter stated that employees "constituting a substantial majority of the total working force" had petitioned the Union to be their bargaining agency. This letter was handed to Mr. Bartels by Mr. Shipp and when Bartels stated in effect that he had no authority to recognize the committee as the bargaining agency, Shipp asked that the matter be referred to such official of the respondent as would have that authority.

19. No reply having been received from the respondent in answer to the above communication, Mr. Shipp on September 5 renewed his request for a conference. (Board Exhibit No. 31.) Following this, there was a meeting between Mr. Shannon and the Union committee in September. At this time reference was made to the petition referred to above but Mr. Shannon made no request to see it. So far as he was concerned, it made no difference whether the committee represented a minority or a majority of the employees. He met with them as representing the employees of respondent who belonged to the Union, but he had no



knowledge as to how many employees were involved. While Mr. Shannon expressed a willingness to consider any problem which might be presented by any individual employee or group of employees, he refused to recognize the Union as the exclusive bargaining agency or to depart from the conditions set forth in the letter of September 18, 1934.

20. On or about December 24, 1935, Shipp requested of [fol. 127] Thomas a wage conference and upon the advice of Thomas that he had no authority to go into such matters, a written request was made to Shannon. (Board Exhibit No. 32.) In reply to this request, Shannon wrote to Shipp on January 6, 1936, asking that the setting of a definite date for the conference be postponed because of other matters at hand. In conclusion he wrote as follows: "Just as soon as we are in a position to consider definite arrangements for a meeting, I will write you." (Board Exhibit No. 33.) In the latter part of January, no further word having been received from Shannon, Shipp requested the services of a conciliator from the United States Department of Labor.

21. The next meeting was held on February 6. The Department of Labor was represented by Mr. Sherman who presided. The respondent was represented by Mr. Thomas and Mr. Bartels, and the Union was represented by its committee. The Union submitted a number of proposed changes in working conditions. (Board Exhibit No. 34.) As a result of the conference a tentative agreement was drawn up which to some extent was based on the original proposal of the Union (Board Exhibit No. 26), and to some extent on the letter of September 18, 1934 (Board Exhibit No. 27). Since the representatives of the respondent were not authorized to sign for the respondent, this tentative agreement was referred to Mr. Shannon who referred it to Mr. Dyer. No re-ly was ever made to the Union.

22. One of the matters submitted by the Union at the meeting of February 6 was a proposed wage increase. At that time, however, it was determined that this question should not be included in the agreement drafted but should be handled separately. Pursuant to this understanding, Mr. Shipp on February 9 wrote to Mr. Thomas requesting negotiations on the proposed increase. (Board Exhibit No.

36.) On March 2, Mr. Shannon made reply to this request. (Board Exhibit No. 37.) He concluded his letter as follows:

"I cannot help but feel that if you will give this matter further careful thought, you will agree it is advisable to await further improvement of conditions affecting the production of oil in the Big Muddy field before pressing any request for a general wage increase."

23. On March 24 Shipp filed charges against the respondent with the Seventeenth Regional Office of the National Labor Relations Board, charging refusal to bargain. On [fol. 128] August 13, however, the charge was withdrawn at the request of the Board on the ground that the issuance of a complaint would not be warranted "in a case in which the men are engaged in the production of oil, a work similar in nature to mining." (Board Exhibit No. 43.)

24. With reference to the agreement which had been drafted on February 6, Shipp wrote to Shannon on March 30 and April 16. On May 8 there was a short meeting between the two men at which Shannon stated he had no authority to represent the respondent on that occasion. Shipp thereupon stated that if a meeting could not be had with the management which could bind the respondent, no further meetings would be requested and that the case was being referred to the National Labor Relations Board. No subsequent meeting on this matter was ever held.

25. On April 29 there had been a meeting between Bartels and Thomas for the respondent, and a committee from the Union to protest the transfer from the field of Moore and Jones, two members of the Union committee. The committee was told at that time that the field was to go on a 48-hour week in place of the 36-hour week which was then in effect. This was given as a reason for the transfers. The committee requested that the whole matter be made the subject of collective bargaining between the respondent and the Union and that there be an opportunity to consider all employees on the basis of seniority and other factors to determine whether Moore and Jones should be the ones to go. Thomas at that time told the committee that he had nothing to do with the transfers because he "didn't think it was any of their business." As will be shown later,

Thomas was directly responsible for the selections made—so far as the record shows. After reference had been made to the fact that the wives of both Moore and Jones were not well, the committee left, understanding that Thomas would refer their requests to Shannon and try to arrange for a meeting. No reply was ever received by the Union from Thomas or Shannon.

26. On May 1 the work week was extended to 48 hours. The effect on the pay of the employees was an increase in the amount received, because of the longer hours, but the actual hourly rate was reduced. The Union had considered opposing this extension of hours when it was rumored, but when the change was made two of the seven members then [fol. 129] in the Union had been ordered to New Mexico. As has been mentioned already, Moore and Jones were members of the Union committee. It has not been stated, however, that Jones was Chairman of the committee and Secretary-Treasurer of the Union local involved.

27. In February of 1937 the employees of the Big Muddy field were called to the office where at a meeting attended by Shannon, Thomas, and Bartels, they were addressed by J. G. Dyer. He referred to facilities being furnished to the employees by the respondent such as insurance, drinking water and electricity, and told the men, in effect, to use their own judgment when pressure was brought to bear on them.

28. On June 28, 1937, Dyer received a telegram signed by three employees at the Big Muddy field as "Committee of Employees," stating that the committee represented 80 per cent of the men. (Resp. Exhibit No. 12.) The telegram protested the transfer of Bartels to Salt Creek. That same day Shannon replied to these employees by telegraph. He addressed them as the "Committee Representing Association of Continental Employees" and stated that the change had been authorized "for the purpose of increasing the efficiency of the field organizations at Salt Creek and Big Muddy." (Resp. Exhibit No. 13.) The only steps which had been taken toward the formation of any "Committee" or "Association" were the circulation of the petition which appears in evidence as Respondent Exhibit No. 20.

29. This petition bears the names of 16 of the 21 men employed at Big Muddy in June of 1937 who were not classi-



fied as "Supervisory" in Respondent Exhibit No. 3-c. The heading is as follows:

"We, the undersigned employees of the Continental Oil Company, hereby notify aforesaid Continental Oil Company that we have formed ourselves into an association of the Production Department employees of Continental Oil Company in the Big Muddy field as provided under the Wagner Labor Relations Act and have appointed Roy Jones, I. H. Oneal and R. P. Peterson as a temporary Committee to represent us in negotiating with the Company under said act until a permanent Committee has been duly appointed."

Neither Shannon nor Dyer had any knowledge of this petition [fol. 130] at the time of the exchange of telegrams referred to above. No other attempt was ever made by the "association" to submit any question to the respondent and no "permanent Committee" was ever established.

29a. In June of 1937 the name of the International Association of Oil Fields, Gas Well and Refinery Workers of America was changed in convention to the Oil Workers International Union. (Board Exhibit No. 106, p. 35) In this connection it appears in the proceedings of the Convention that the change in name did not require a change in the headings of stationery until existing supplies were exhausted.

30. The production and maintenance employees at the Big Muddy field employed by the respondent in the production of crude oil and gas constitute an appropriate unit for the purpose of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act.

31. A majority of said employees had designated the International Association of Oil Field, Gas Well and Refinery Workers of America, now being the Oil Workers International Union, a labor organization as defined in the National Labor Relations Act, as their representative for the purpose of collective bargaining with respondent in respect to rates of pay, wages, hours of employment, and other conditions of employment. At all times since August 12, 1935, the International Association of Oil Field, Gas Well and Refinery Workers of America, now being the Oil Workers International Union, has been, by virtue of Section 9 (a) of said Act, the exclusive representative of all employees in

such unit for the purpose of collective bargaining with the respondent in respect to rates of pay, wages, hours of employment and other conditions of employment.

32. The International Association of Oil Field, Gas Well and Refinery Workers of America, now being the Oil Workers International Union, has attempted on or about August 12, 1935, and at various times thereafter to bargain collectively with respondent, as exclusive representative of respondent's production and maintenance employees at the Big Muddy field engaged in the production of crude oil and gas in respect to rates of pay, wages, hours of employment and other conditions of employment.

33. The respondent did, on or about August 12, 1935, and [fol. 131] at all times thereafter refuse to bargain collectively with the International Association of Oil Field, Gas Well and Refinery Workers, now being the Oil Workers International Union as exclusive representative of respondent's production and maintenance employees at the Big Muddy field engaged in the production of crude oil and gas in respect to rates of pay, wages, hours of employment and other conditions of employment.

#### B. Refusal to Bargain at the Glenrock Refinery

34. At the refinery, as in the Big Muddy field, the Union was selected by a majority of the employees at the Petroleum Labor Policy Board election in July 1934 and by a petition circulated in July 1935. As has been stated above the same local of the Union takes into membership employees at Big Muddy and at the refinery. The two principal representatives of the respondent in charge of the refinery are Walter Miller, vice president in charge of refining, and Carl R. Tillman, superintendent at the refinery.

35. Submission to Tillman of a proposed agreement in the late summer of 1935 similar to that which was presented to Thomas at Big Muddy resulted in a letter from Mr. Miller which for all practical purposes is the same as that obtained by the committee at Big Muddy from Mr. Shannon. (Board Exhibit No. 47) On December 15, 1934, at a meeting between the committee and Mr. Miller he refused to give any particular consideration to certain employees whom, it was charged, had been laid off because of their union activity. He also refused to recognize the Union as

the bargaining agency or to cease bargaining with the Employees Council. Miller insisted that he would give the same consideration to the Employees Council as to any other group of employees.

36. On or about April 27, 1935, there was a conference between Miller and the committee pursuant to a written request which, among other purposes, was requested for the purpose of working out "a contract that can be mutually agreed upon." At the conference Miller stated that a wage increase was to be granted through the Employees Council because they had presented statistics on the question. He further stated that the respondent would not consent to any agreement.

37. Pursuant to the petition of July 1935 (Board Exhibit No. 49) the respondent was notified by letter dated August [fol. 132] 12 that "a substantial majority" of the employees at Glenrock had petitioned the Union "to be their bargaining agency." (Board Exhibit No. 50) The letter was passed on to Miller by Tillman, to whom it was first presented, because Tillman as he stated, had no authority to enter into negotiations. On August 17 Miller replied. (Board Exhibit No. 51) After stating that he "thought that the company's attitude regarding its relations with employees was thoroughly understood," he concludes his letter with the following language:

"I am therefore at a loss to understand exactly what you have in mind when you state you wish to make a collective bargain, as according to my way of thinking we have been collectively bargaining with our employees for a considerable length of time past, one group through the Council and the other group through the committee of employees representing Local Union 242." (Board Exhibit No. 51)

38. Through subsequent communications it was arranged that in order not to inconvenience Miller by asking him to travel to Glenrock from Ponca City, matters concerning conditions of employment would be referred first to Tillman.

39. On January 14, 1936, there was a meeting between the committee and Tillman at which proposals were submitted similar to those considered at the meeting concerning the Big Muddy field on February 6. (Board Exhibit No. 34.)



These were referred to Miller by Tillman. Previous to this, Shipp had communicated directly with Miller concerning a proposed wage increase. (Board Exhibit No. 54) After further exchange of correspondence (Board Exhibits 55, 56, 57), none of the requests of the Union being granted and no counter-proposals being made, attempts on the part of the Union to negotiate with the respondent as the representative of its employees at the refinery were terminated.

40. The production and maintenance employees of the respondent engaged at the Glenrock refinery constitute an appropriate unit for the purpose of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act.

41. A majority of said employees had designated the International Association of Oil Field, Gas Well and Refinery Workers of America now being the Oil Workers International Union, a labor organization as defined in the National Labor Relations Act, as their representative for the purpose of collective bargaining with respondent in respect to rates of pay, wages, hours of employment, and other conditions of employment. At all times since August 12, 1935, the International Association of Oil Field, Gas Well and Refinery Workers of America now being the Oil Workers International Union has been, by virtue of Section 9 (a) of said Act, the exclusive representative of all employees in such unit for the purpose of collective bargaining with the respondent in respect to rates of pay, wages, hours of employment and other conditions of employment.

42. The International Association of Oil Field, Gas Well and Refinery Workers of America now being the Oil Workers International Union has attempted on or about August 12, 1935, and at various times thereafter to bargain collectively with respondent, as exclusive representative of respondent's production and maintenance employees at the Glenrock refinery in respect to rates of pay, wages, hours of employment and other conditions of employment.

43. The respondent did, on or about August 12, 1935, and at all times thereafter refuse to bargain collectively with the International Association of Oil Field, Gas Well and Refinery Workers now being the Oil Workers International Union as exclusive representative of respondent's produc-

tion and maintenance employees at the Glenrock refinery in respect to rates of pay, wages, hours of employment and other conditions of employment.

**C. Discriminatory Discharge of Ernest Jones and F. D. Moore**

44. Previous reference has been made to the increase in weekly hours of work at the Big Muddy field in the spring of 1936 resulting in the ordered transfers of Moore and Jones out of the field. In anticipation of the anticipated increase in the work week Shannon talked with Thomas and Bartels around the 3rd or 4th of April. He asked them for their recommendations as to which men should be transferred. That same day it was recommended that Moore, Jones, Whitlock and Jackson be transferred. On April 3, Shannon wrote to J. G. Dyer asking if jobs could be found for Jones and Moore "in the Oklahoma or Texas Divisions." (Resp. Exhibit No. 14-a) Thomas wanted to get them "out of the District" where he wouldn't be "bothered with them any more."

[fol. 134] 45. As to such basis as there was for the selection of the four men named above, there is much confusion on the record. So far as Whitlock and Jackson were concerned Thomas favored their transfer because of a housing problem and Bartels favored the transfer because of some difficulties which had occurred on the night shift, where these men were working. When it developed that Whitlock was not acceptable to Bowen, foreman at Salt Creek, he was replaced by Canning. Whitlock was continued in his employment at Big Muddy. Canning and Jackson were transferred to Salt Creek. At this time neither of them were members of the Union in good standing. (Resp. Exhibit No. 7.)

46. Ernest Jones had been employed by the respondent for approximately 10 years prior to April 1936, having been at Big Muddy since 1928 and a pumper since 1929. In 1935 he was transferred from the classification of pumper to relief pumper but so far as the record shows, no particular significance is to be attached to this fact. Other duties which he had performed included helping with the driller crew, firing boilers, cutting threads in the shop, working with the well pulling crew, and helping to build and tear

down tanks. He was a charter member in the Union in which his activities have been described previously.

47. On Thursday, April 27, 1936, while Jones was at work he was told by Bartels that he had been transferred to Hobbs, New Mexico, where he was to work as a roustabout and that he was to be there the following Monday morning, May 1. Jones referred to his wife who was under doctor's care and asked why someone else could not go instead. Bartels replied that he did not know. The following 3 days Jones was out of town and on Monday morning he reported to Thomas that he would not take the transfer. Thomas reminded him that his expenses were to be paid and then told Jones they would send a telegram that he was not coming.

48. The following day in a conversation between Bartels and Jones there was discussion as to whether Jones had been fired or had quit, and Bartels asked Jones when he was going to get out of the company house. On May 3 and 4 Jones went to the office to see if there was any work and on one occasion talked to Thomas and on the other with Bartels. There was no work for him either time. On the second of these occasions Bartels said to Jones, "Mr. Thomas told me you were through with the Continental Oil [fol. 135] Company." After this Jones did not seek further employment with the respondent and in June he received a check from the respondent marked "Termination check."

49. On the record, the reason stated for the transfer of Jones and Moore was the extension of the work week, but when hours were reduced the following year, requiring the taking on of additional men, no opportunity for employment was afforded to either of these men. Jones who had been a pumper for 7 years was replaced by O'Neal who had been a roustabout for about 1 year. There is much testimony concerning the unsatisfactory nature of Jones' work, a substantial portion of it being to the effect that he failed to keep up his lease properly. Dyer instructed Shannon on April 10 that "If these employees are not performing their duties, they should be laid off, regardless of the change of schedule. (Respondent Exhibit No. 14-c.) Since Jones was working as a relief pumper for approximately 8 months before he was given notice of his transfer there is no sound



basis for any complaint to the effect that he failed to maintain his lease properly during this period. He was working on a given lease only 1 or 2 days a week so that the appearance of any lease on which he was working was due primarily to the activities of the regular pumper involved.

50. Specific reference is made in the record to a fire at one of Jones' wells and to one occasion when a pump was down for several hours. So far as the fire is concerned, the cause was never established. On the occasion when one pump was down for several hours, the record indicates that defective equipment was partially responsible. On this occasion Bartels told Jones that he was fired and later came back and told him that if he would quit his union foolishness and do more work he could continue. Jones continued working. This incident occurred in the spring of 1936 and the fire occurred in the winter of that same year. When Jones was notified of his transfer neither of these incidents were mentioned.

51. F. D. Moore had been employed at the Big Muddy field for different companies since 1919. For some 10 or 15 years he had been employed by the respondent. In April 1936 only one man had been at work in the Big Muddy field longer than Moore. The work which Moore had done included the following: helping a teamster, roustabouting, [fol. 136] gang pusher, tool dressing, cleaning out wells, working on a rotary drill, booster station, pumping, and yard man. He joined the Union in the fall of 1933, and was a member of the Workmen's Committee from 1934 until April 1936.

52. On or about April 27, 1936, Moore was advised by Bartels that they had a transfer for him to Hobbs, New Mexico. From the conversation it was Moore's understanding that he was to work on tools which in his opinion was a job which he, at 54 years of age could not handle. It involved caring for engines and boilers and handling sledges as well as some climbing. He raised the question as to whether the transfer was due to his Union affiliation and got no satisfactory answer from Bartels. He then pointed out that his wife was ill. Finally he refused to accept the transfer under the conditions. Bartels then asked him about relinquishing his house.

53. Approximately 1 week later Moore was offered a transfer to Fort Collins, Colorado. This he also refused.

Subsequent to that, he was offered his job back at Big Muddy for the duration of his wife's illness. Moore also refused this offer. He felt the trouble was "organized labor."

54. During his employment he had been paying \$1.40 per month for \$2,000 of life insurance in addition to the \$25.00 policy which the respondent was carrying for him. This insurance plan is described in Respondent's Exhibit No. 4. At the time he left the employ of the respondent, Moore failed to exercise the conversion privilege contained in the plan. No representative of the respondent made any suggestion to him in this respect. Since June 1936 he has been employed as a guard at the Wyoming State Penitentiary at Rawlins.

55. On the record there is an abundance of testimony as to the generally unsatisfactory nature of Moore's work, but except for one incident which occurred in 1925 no specific incident of any real significance is reported. There is testimony as to many reports from head roustabouts concerning the unsatisfactory manner in which Moore was fulfilling his duties. There is, however, no showing that he was ever disciplined or threatened with discipline and no head roustabout was called to the stand to testify as to his own observations of Moore's conduct.

56. Ernest Jones and F. D. Moore were discharged by Ray Bartels, agent of the respondent, on or about May 1, [fol. 137] 1936, and have since been refused employment by respondent for the reason that said Ernest Jones and F. D. Moore joined and assisted a labor organization known as the International Association of Oil Field, Gas Well and Refinery Workers of America, now being the Oil Workers International Union, and engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection.

57. By said discharge and refusal to employ said Ernest Jones and F. D. Moore, respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act.

58. By said discharge and refusal to employ said Ernest Jones and F. D. Moore, respondent has discouraged mem-

bership in the labor organization known as the International Association of Oil Field, Gas Well and Refinery Workers of America, now being the Oil Workers International Union.

**D. The Independent Association of Conoco Glenrock Refinery Employees**

59. Subsequent to the Petroleum Labor Policy Board election in the summer of 1934 there was formed at the Glenrock Refinery the Plan For Employees Council with the active participation of the respondent through Walter Miller, vice president, for the purpose of representing that minority of the employees which had not voted for the Union. The original committee was made up of the following persons: C. A. Boyd, F. H. Jones, C. E. Martin, Edward Plaster, and C. R. Smith. (Board Exhibits No. 63, 64, 65, 66) The Chairman of the Council was C. E. Martin, a boiler fireman, and the Secretary was Davis, chief clerk at the refinery.

60. From time to time the committee of representatives consisting of Martin, Smith, Rainey and Culshaw, met with Davis to discuss grievances. On the basis of these discussions Davis wrote up statements which were transmitted by Davis to Tillman. On some occasions Tillman in turn transmitted these to Miller. In the spring of 1935, as has been mentioned previously, a general wage increase to all hourly paid employees in the plant, was granted through the Council.

61. On or about April 15, 1937, Martin was advised by Tillman that Miller had informed him that the respondent would no longer have anything to do with the Council Plan [fol. 138] On April 30 Miller wrote to Tillman concerning the effect of the Wagner Act on the Employees Council. (Board Exhibit No. 102) In this letter the following paragraphs were contained:

"It has become necessary to study our management-employee council plan for collective bargaining with employees at Glenrock, to determine the effect on it of the Supreme Court's decision on the Wagner Act.

"Collective bargaining as now established by law is a process by which the majority of the employees of an appropriate unit elect representatives to meet with the management to discuss and settle all matters affecting wages, hours



and working conditions. The Act thus recognizes the principle of collective bargaining which has been followed voluntarily and successfully for almost 3 three years by our employes and management."

"The management council plan in effect at Glenrock really deviates from the new law only in the fact that such expenses as council has are paid by the company. It was started entirely by the employes and their representatives and not by the company; it has never been dominated by management either in its formation or operation, and no management appointed representatives have had any vote or say in its decisions.

"I enclose two copies of a new plan which has been worked up by a committee of employes selected at a mass meeting of refinery workers, which is now being voted on by the workers of the Ponca City refinery. I am optimistic of its wide acceptance by a large majority of the employees, but the actual results of the balloting will not be known until sometime next week."

62. A copy of the enclosed plan referred to above appears in evidence. (Board Exhibit No. 138) With reference to the Ponca City movement Miller writes that it started "by some of the workers asking their fellow workers to sign a pledge against joining any outside union." He states that after the Supreme Court decision, "it was quickly recognized that the Ponca City form of council—did not conform to the Wagner Act" but adds that "The old council is continuing to function until some new form of organization concurring with the requirements of the Wagner Act is available."

[fol. 139] 63. After referring to the sending to Mr. Tillman of copies of the "Wagner Act," Miller concludes his letter with the following paragraphs:

"I think your employe council as at present constituted can rightfully and legally consider the new problems involved, with a view of determining what steps they may wish to take and which they think would be in accord with the desires of their constituents, whether looking to the revising of the present form to conform to the Act or to

setting up of a new labor organization to supplant the present council plan.

"At Ponca City the elected representatives of the council told me they were a unit in feeling that it was their duty to do all they could toward the formation of a new organization to take over the work of the old council.

"I have written you at some length as a matter of information, and if any of the employees, either individually or as a group, consult you, the above will be a good guide in your expressions. Neither you nor any other member of the management group is permitted to take any part in any movement to form a new setup. It must be done by the men without interference, domination, et cetera by the management.

"Tell the men that if they decide to work up something to fit the new conditions, and want to consult with me, I shall be glad to come to Glenrock for the purpose in the near future. They could, of course, get considerable preliminary work done, so my stay wouldn't have to be too long, but I'd put in all the time necessary for their purpose."

64. Early in May of 1937 there was a meeting in the office at the refinery during working hours of the four men referred to above as being on the committee of the Council, together with Davis. The result of this meeting was the Constitution and Bylaws of Continental Refinery Employees Union of Glenrock. (Board Exhibit No. 61 C-H) The purpose of this organization as set forth in Article I is the same as that set forth in Article I of the Plan For Employees Council except for the changing of the name of the organization involved. (Board Exhibit No. 64) Copies of the Constitution and Bylaws were mimeographed by the respondent and distributed to the employees at the refinery. [fol. 140] To some extent at least, copies were obtained by the men at the locker room when they went off shift. With each copy there was included an "Acceptance Slip" (Board Exhibit No. 61 a) and a covering notice. (Board Exhibit No. 61 B) The "Acceptance Slip" contained the following language:

"I hereby subscribe to the constitution and by-laws of the Continental Refinery Employees Union of Glenrock and accept this independent union as my designated method of collective bargaining."

65. The covering notice was essentially the same as the one attached to the "new plan" of which Miller sent copies to Tillman on April 30. (Board Exhibit No. 138 A) The paragraphs below are identical on the notice forwarded by Miller and on the notice issued at Glenrock.

"The copy attached is the constitution and by-laws framed by this committee and will, if adopted by a majority of the employes, govern collective bargaining in the future between the employes and the management.

"The plan was framed entirely by the employe's committee, and no management representatives were present."

66. On or about May 8, 1937, pursuant to notice on the bulletin board signed by Martin, there was a meeting in the evening at Pop's Dance Hall. Martin opened the meeting and subsequently was named as chairman. After reference was made to the invalidation of the Council Plan by the Supreme Court, followed by some discussion, a vote was taken on the question of whether the Constitution and By-laws which had been prepared should be accepted. Of approximately 46 refinery employees present, only 14 voted in favor of acceptance. Soon thereafter the meeting was adjourned.

67. On May 19, 1937, a meeting was held at the City Hall following a notice posted on the bulletin board which was signed by Martin. The announced purpose of the meeting was to form an independent association. (Board Exhibit No. 69-C) As shown by the minutes of this meeting, which was opened by Martin, a chairman was elected and Martin was elected secretary. (Board Exhibit No. 69-A) A committee of seven was elected to draw up the Constitution and By-laws. No vote was taken on the question of whether [fol. 141] there was any desire on the part of the 20 employees present to form an organization of any kind.

68. On June 4, at a meeting at the City Hall, notice of which had been given on the bulletin board. (Board Exhibit No. 72-D) the Constitution and Bylaws prepared by the committee were adopted as read, with minor changes. (Board Exhibit No. 68) The 14 employees present then affixed their signatures. Thereafter additional signatures were obtained. Officers were elected at a meeting on June 18.



69. On August 6 a committee from the Independent handed Tillman a letter which contained the paragraphs shown below. (Board Exhibit No. 83)

"We have formed an organization of the Conoco Glenrock Refinery Employee's, known as 'The Independent Association of Conoco Glenrock Refinery Employee's.'

"Our Pledge constitutes a majority of the employees on hourly bases at the Glenrock Refinery. We therefore ask to be recognized as the bargaining agent for the men we represent and hold conference with the management."

70. Mr. Miller replied on August 9. (Board Exhibit No. 84) In his letter he stated that the "Continental Oil Company hereby officially accepts The Independent Association of Conoco Glenrock Refinery Employees as the collective bargaining agency with its employees in its Glenrock, Wyoming, refinery, in accordance with the provisions of the National Labor Relations Act." Miller requested at the same time information concerning the number of employees eligible to vote and the number favoring the Independent, which information, as he wrote, would "support the statement in your letter that a majority of the employees have accepted your organization as their official bargaining agency."

71. In response to Miller's request the Independent forwarded to him on August 12 the following information:

"Yours of the 9th, received and in answer will say that we have 80 hourly paid employees on the payroll at the Conoco Glenrock Refinery. From these employees 46 have signed our pledge to accept the 'Independent Association of Conoco Glenrock Refinery Employee's' form of collective bargaining. 34 of the employees either were members of other organizations or wished to be neutral." (Board Exhibit No. 85)

[fol. 142] 72. Miller's letter of August 9 was supplemented on September 11 at the request of the Independent by a bulletin announcing that the Independent had been recognized "as the representative organization selected for the purpose of collective bargaining by the majority of employees in the plant." (Board Exhibit No. 99) The concluding paragraph of the bulletin was as follows:

"Management pledges itself to cooperate with your new organization as fully and as earnestly as in the past, and feels certain the same cooperation will be extended by the elected representatives of the employees, to continue the objective of the Employees Council, 'to place and secure cooperation between employees and management upon a definite and durable basis of mutual understanding, sincerity, confidence, and to promote their common interests \* \* \*'"

73. In the period between September 4 and December 1, 1937, four requests were made upon the respondent by the Independent concerning changes in working conditions. In summary, these requests concerned general rate increases in two different amounts, a particular increase for still firemen, and a change in the policy concerning entering and ultimate rates. All requests were submitted to Mr. Miller in writing and all were refused by him in writing. At no time did he participate in a conference with the committee until after the last request had been refused. (Board Exhibits 86-88)

74. On November 3 at a regular meeting of the Independent it was voted that the secretary "collect dues to January 1, 1938, and then suspend same until necessary to take further action." (Board Exhibit No. 79) At a regular meeting on November 16, after the refusal to the latest request of the Independent had been received, the committee was instructed "to get better results." It was voted that Mr. Miller be requested to attend "a general meeting to be held with him to discuss the questions involved in the letters." (Board Exhibit No. 80)

75. Pursuant to the above request Mr. Miller was a guest at a meeting of the Independent on December 1. No questions were asked of him and he compared rates of pay in the oil industry with those in other industries. The minutes for that meeting conclude with the statement that, "There was a very nice attendance and all seemed to be satisfied with the [fol. 143] statements made." (Board Exhibit No. 81) Since that time no attempt has been made by the Independent to take up any matter with the respondent.

76. The respondent, by its officers and agents since May 1937 formed and sponsored the Independent Association of

Conoco Glenrock Refinery Employees as a labor organization of its employees.

77. The Independent Association of Conoco Glenrock Refinery Employees is a labor organization within the meaning of the National Labor Relations Act.

78. The respondent has dominated and interfered with the formation and administration of a labor organization of its employees by the activities hereinbefore set forth, and has contributed support to said labor organization.

#### E. Refusal to Bargain at Salt Creek

79. In the month of December 1936 15 men at Salt Creek signed applications for membership in the International Association of Oil Field, Gas Well and Refinery Workers of America and in that month, or the following month, made dues payments. (Board Exhibit No. 104 A, B, C) All of these men are named on respondent's pay roll for January 1937 at Salt Creek under the classification "Field." (Respondent Exhibit No. 9-A) Excluding Bowen, the foreman, there were 28 men on this particular pay roll. Under the classification "Plant" which refers to the gas plant previously referred to, there were 8 men, excluding Kennelly, the then foreman. Although employees at the gas plant are eligible for membership in the Union and to some extent had been taken into membership prior to December 1936, there were no members in the Union from that group in January 1937.

80. On January 18, 1937, the workmen's committee of local 233 of the Union called upon Bowen. The men on this committee were Lennon, McGregor, and Booth. They asked for a meeting with Shannon to discuss, in particular, hours, wages, and overtime. Bowen replied that he was instructing his gang pushers to keep track of all overtime so that the men might take time off to compensate for that which they worked, but added that the matter of hours and wages must be passed on to someone with authority.

81. On January 19 the same committee met with Bowen, [fol. 144] Shannon, and Thomas. The committee reported that the Union had 15 members and Shannon ascertained from Bowen that he had 28 men in his department. The matters discussed as shown on Board Exhibit No. 111 were the



36-hour week, an increase in wages, vacations with pay, and time and one-half for overtime. There was discussion of a reported raise by Sinclair and a request by Shannon that the men consider such advantages as the bonus and sick benefits. He stated he could give no answer at that time, but that he expected to be back in 2 or 3 weeks. He requested that the demands be put in writing and left with Bowen. This was done on the following day. (Board Exhibit No. 110) Bowen asked about a call he had received and was told his caller was F. T. Frisby, District Representative for the Union. In conclusion, Shannon made reference to the granting of an increase which had been made effective January 16.

82. On February 4 the men at Salt Creek were called to a meeting addressed by J. C. Dyer. Shannon, Thomas, and Bowen also were present. The talk apparently was similar to that already reported at Big Muddy at approximately this same time. In addition, however, Dyer referred to certain requests which had been made of the management and stated in effect that the men would not want them because it would mean they would be deprived of benefits they were then receiving. (Board Exhibit No. 112) About this time a somewhat similar talk was given at the gas plant by the foreman there.

83. About the first of March weekly hours of work at Salt Creek were reduced from 48 to 40. No reply had been made to the Union since the meeting of January 19 and no discussion of any kind was had with the committee concerning the reduction of hours.

84. During the spring of 1937 Frisby, District Representative, made frequent attempts to arrange a conference with the respondent. (Board Exhibits No. 125-135, inclusive) The net result of this correspondence was two letters. One of these was from Shannon in April and the other from Dyer in June. Each of the letters concluded with the statement that "your connection" with the respondent or its employees is "entirely unknown to me." Prior to that time Frisby had had personal interviews with both Thomas and Bowen.

85. In response to a request made by Lennon, McGregor and Booth for a meeting for "ourselves and our representatives," (Board Exhibit No. 113) a meeting was

held on May 12 at which the respondent was represented by Shannon, Thomas, and Bowen. The Union was represented by the three men named above and also three members of the Union who were not employed by the respondent. Nothing was accomplished. Shannon stated that he had no authority to deal with persons who were not employees of the respondent. After discussion of this issue, the meeting broke up. (Board Exhibit No. 105)

86. The request for this meeting started with the statement: "We the Workman's Committee representing employees of the Continental Oil Company, Production Department Salt Creek Field, who choose to bargain through Local 233 of the International Association of Oil Field Gas Well and Refinery Workers of America \* \* \*." On August 17 another request was made upon the respondent by the same committee. (Board Exhibit No. 114.) This request was for a "blanket wage increase" and the opening statement was, "We, the Workman's Committee, representing the Continental Production Department of this District under the jurisdiction of Local #233 \* \* \*." Mr. Shannon's reply which was addressed to the individual members of the committee read in part as follows:

"Your request cannot receive consideration coming from you as a committee representing the employees of this company in the Salt Creek Field, inasmuch as our records do not disclose that you are qualified under the law to so act.

"If you will advise that your request be considered from you as individual employees of this company, a prompt answer will be given you." (Board Exhibit No. 115.)

87. Within a period of approximately 2 months prior to this request authorization slips had been signed by 20 of the 32 men listed on the Salt Creek "Field" pay roll for the month of August 1937. (Board Exhibits No. 109-h and 116.) These authorization slips (Board Exhibit No. 116) contain a provision whereby each signer does "choose Local Union 233 of the International Association of Oil Field, Gas Well and Refinery Workers' of America as the agency for collective bargaining."

88. The production employees, exclusive of employees engaged in the gas compression and reduction plant, employed by the respondent at its Salt Creek field constitute an appropriate unit for the purpose of collective bargaining

within the meaning of Section 9 (b) of the National Labor Relations Act.

89. A majority of said employees had designated the International Association of Oil Field, Gas Well and Refinery Workers, now being the Oil Workers International Union, a labor organization as defined in the National Labor Relations Act, as their representative for the purpose of collective bargaining with respondent in respect to rates of pay, wages, hours of employment, and other conditions of employment. At all times since January 18, 1937, the International Association of Oil Field, Gas Well and Refinery Workers, now being the Oil Workers International Union, has been, by virtue of Section 9 (a) of said Act, the exclusive representative of all employees in such unit for the purpose of collective bargaining with the respondent in respect to rates of pay, wages, hours of employment and other conditions of employment.

90. The International Association of Oil Field, Gas Well and Refinery Workers, now being the Oil Workers International Union, has attempted on January 19, 1937, and thereafter to bargain collectively with respondent, as exclusive representative of respondent's production employees at its Salt Creek field, exclusive of its employees engaged in the gas compression and reduction plant, in respect to rates of pay, wages, hours of employment and other conditions of employment.

91. The respondent did, on January 19, 1938, and at all times thereafter, refuse to bargain collectively with the International Association of Oil Field, Gas Well and Refinery Workers of America, now being the Oil Workers International Union, as exclusive representative of respondent's production employees at its Salt Creek field, exclusive of its employees engaged in the gas reduction and compression plant in respect to rates of pay, wages, hours of employment and other conditions of employment.

#### F. The Continental Employees Bargaining Association

92. As has been previously noted, Jack Hainworth was officiating in connection with the Petroleum Labor Policy election in the summer of 1934 on behalf of the employees' representation plan. So far as the record shows, he did not [fol. 147] participate actively in connection with the plan



thereafter. He has been employed as a pumper by the respondent at Salt Creek. In the spring of 1937 together with Feaster, another pumper, he became interested in the circulation of a petition among the employees in the field.

93. In late April or early May, Hainworth and Feaster met with Shannon and Thomas in Casper. They were taken there in an automobile by Bowen and Kennelly. Bowen was the foreman of production and Kennelly was the foreman at the gas plant at Salt Creek. The result of the meeting was a heading suggested by Shannon to be used on a petition which was to be circulated by Hainworth for the purpose of forming an independent union.

94. The petition was typewritten by Hajny, the clerk of the production department. For typing done on this and on the by-laws, Hainworth paid Hajny \$12. Whether or not this typing was done during working hours does not appear from the record.

95. Through the efforts of Hainworth and Feaster, 21 signatures were affixed to the petition. The names of the signers appear on the Salt Creek pay roll of the respondent for May 1937 and are included in the "Field" and "Plant" classifications. (Respondent Exhibit No. 92.) On that pay roll in both classifications 42 men are listed including Bowen and Kennelly. To some extent, these signatures were solicited on company time and in at least one case, that of Anderson, the signer was taken from his work with the knowledge of his superior.

96. The heading on the petition is as follows:

"We, the undersigned, employees of the Continental Oil Company in the Salt Creek Field and Gasoline Plant, take this means of notifying the Company that we have grouped ourselves together for the purpose of bargaining with the Company as provided by law and have duly appointed the following men to act as a committee to represent us for this purpose:

....."

97. The three spaces shown above were never filled in. No men were ever appointed to "act as a committee." The petition with the signatures previously referred to was sub-

[fol. 148] mitted to Bowen who passed it on to Shannon. On June 9 Shannon wrote the following letter:

"I am duly in receipt from Production Foreman E. A. Bowen of your notice of May 14 to the Company, advising us that you have associated yourselves together for the purpose of bargaining with the Company, as provided by law.

"I will be glad to meet with you, or a Committee which you may select to represent you, for a discussion of any matters which you wish to take up with the Company from time to time and will endeavor to arrange such meetings at a mutually agreeable time and place within a reasonable time after receiving your request, which I will ask that you present in writing to our Production Foreman at the Salt Creek office."

98. At the top of the letter are listed the names of all persons who appear as signers of the petition. The salutation is "Gentlemen." (Board Exhibit No. 117.) Although a proposed constitution and an agreement were drawn up no organization was ever formally established. No name was ever adopted. Preliminary meetings were held on June 10 and June 24, but on June 24 because of the small attendance the meeting was not actually called to order and no subsequent step has ever been taken with reference to this development so far as the record shows.

99. The respondent, by its officers and agents formed and sponsored the group of Salt Creek employees "for the purpose of bargaining with the Company" as a labor organization of its employees.

100. The group of Salt Creek employees "for the purpose of bargaining with the Company" is a labor organization within the meaning of the National Labor Relations Act.

101. The respondent has dominated and interfered with the formation of a labor organization of its employees by the activities hereinbefore set forth, and has contributed support to said labor organization.

### III. Interstate Commerce

At the Salt Creek field the daily production of oil for respondent's own account is approximately 650 barrels. All of this is sold locally to another oil company. Respondent's

[fol. 149] daily production of casinghead gasoline at this field, being approximately 3000 gallons, is shipped by respondent to its refinery at Lewistown, Montana.

At the Big Muddy field the oil produced by respondent for its own account approximates 900 barrels. This production, together with approximately 300 additional gallons daily, being produced for the account of others, is shipped by pipe line to respondent's Glenrock refinery. This amount going to the Glenrock refinery constitutes approximately 50 per cent of the total oil refined daily at the Glenrock refinery. Approximately 60 per cent of the products of the refinery are shipped by the respondent to points outside of the State of Wyoming. The total annual value of shipped refinery production approximates \$2,000,000.

The activities set forth in Section II above, occurring in connection with the operations of the respondent set forth herein have a close, intimate, and substantial relation to trade, traffic and commerce among the several States, and have led and tend to lead to labor disputes burdening commerce and the free flow of commerce.

### Conclusions and Recommendations

Upon the basis of the foregoing findings of fact, the undersigned hereby determines and concludes:

1. Respondent by refusing to bargain collectively; by discharging and refusing to employ F. D. Moore and Ernest Jones, and thus discouraging membership in the International Association of Oil Field, Gas Well and Refinery Workers of America, now being the Oil Workers International Union; and by dominating and interfering with the labor organizations known as the Independent Association of Conoco Glenrock Refinery Employees and the group of Salt Creek employees "for the purpose of bargaining with the Company"; and by contributing support to them; and by interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, as set forth in the above findings of fact, has engaged in and is engaging in an unfair labor practice affecting commerce within the meaning of Section 8, subdivision (1) and Section 2, subdivision (6) and (7) of the National Labor Relations Act.



2. Respondent by refusing to bargain collectively, as set [fol. 150] forth in the above findings of fact, has engaged in and is engaging in an unfair labor practice affecting commerce within the meaning of Section 8, subdivision (5), and Section 2, subdivision (6) and (7) of the National Labor Relations Act.

3. The respondent by discharging and refusing to employ F. D. Moore and Ernest Jones, and thus discouraging membership in the International Association of Oil Field, Gas Well and Refinery Workers of America, now being the Oil Workers International Union, as set forth in the above findings of fact, has engaged in and is engaging in an unfair labor practice within the meaning of Section 8, subdivision (3), and Section 2, subdivision (6) and (7) of the National Labor Relations Act.

4. The respondent by dominating and interfering with the labor organizations known as the Independent Association of Conoco Glenrock Refinery Employees and the group of Salt Creek employees "for the purpose of bargaining with the Company" and by contributing support to them, as set forth in the above findings of fact, has engaged in and is engaging in an unfair labor practice affecting commerce within the meaning of Section 8, subdivision (2), and Section 2, subdivision (6) and (7) of the National Labor Relations Act.

Wherefore, the undersigned recommends that:

1. Respondent cease and desist from interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

2. Respondent cease and desist from:

a. Refusing to bargain collectively with the Oil Workers International Union, the representative of its production and maintenance employees at the Big Muddy field, and at the Glenrock refinery, and the representative of its production employees at the Salt Creek field, exclusive of those engaged in the gas compression and reduction unit;

b. Discouraging membership in any labor organization by discrimination in regard to hire or tenure of employment or any term or condition of employment;

[fol. 151] c. Dominating or interfering with the formation or administration of the Independent Association of Conoco Glenrock Refinery Employees or the group of Salt Creek employees "for the purpose of a bargaining with the Company," and from contributing support to either of them or to any other labor organization.

3. In order to effectuate the policies of the Act, take the following affirmative action:

a. Upon request, bargain collectively with the Oil Workers International Union as the exclusive representative of the employees in each of the units set forth in paragraph 2 (a) above.

b. Offer to F. D. Moore and Ernest Jones employment in the respective positions formerly held by them with all rights and privileges previously enjoyed. With reference to F. D. Moore this should include specifically the restoration of his individual insurance policy previously referred to upon payment of those premiums on which he is in default at the time of reinstatement.

c. Make whole said F. D. Moore and Ernest Jones for any losses of pay they have suffered by reason of their discharge, by payment to each of them, respectively, of a sum equal to that which each would normally have earned during the period from the date of his discharge to the date of offer of employment as recommended herein, less amounts earned by each during such period.

d. Withdraw all recognition from the Independent Association of Conoco Glenrock Refinery Employees and from the group of Salt Creek employees "for the purpose of bargaining with the Company" as agencies for collective bargaining and completely disestablish them as such.

e. Post immediately notices to its employees in conspicuous places at the Big Muddy field, at the Salt Creek field, and at the Glenrock refinery stating: (1) that it will cease and desist as aforesaid; (2) that it will take the affirmative steps aforesaid; and that (3) said notices will remain posted

for a period of sixty (60) consecutive days from the date of posting.

f. File with the Regional Director for the Twenty-second Region a report in writing setting forth in detail the manner and form in which it has complied with the foregoing requirements.

[fol. 152] It is further recommended that, unless on or before ten (10) days after receipt of this report the respondent notifies said Regional Director that it will comply with the foregoing recommendations, the matter be referred forthwith to the National Labor Relations Board and that said Board issue an order requiring respondent to take the action aforesaid.

Request for the privilege of oral argument before the National Labor Relations Board upon issues raised by any exceptions to this report must be made within ten (10) days from the receipt of this report.

Waldo C. Holden, Trial Examiner.

Dated: May 11, 1938.

#### BEFORE NATIONAL LABOR RELATIONS BOARD

##### EXCEPTIONS OF RESPONDENT, CONTINENTAL OIL COMPANY, TO INTERMEDIATE REPORT

Respondent, Continental Oil Company, hereby files the following statement of its exceptions to the Intermediate Report of the Trial Examiner and the record in the above-entitled proceedings in accordance with Section 34 of Article II of the Rules and Regulations, Series I, as Amended, of the National Labor Relations Board.

#### As to the Examiner's Findings of Fact

1. Respondent excepts to the Trial Examiner's finding in Paragraph 2 in that

(a) He fails to find from the evidence that the withdrawal of the natural gas from the oil wells in Salt Creek Field is a necessary or proper incident to the production of oil from said wells;



(b) He fails to find from the evidence that the operation of said gasoline extraction plant is a necessary or proper incident to the production of oil by Respondent from the wells in Salt Creek Field; and

(c) The finding that the purpose of drawing natural gas from the wells is for drying it and removing gasoline from it is not established or supported by the evidence.

2. Respondent excepts to the Trial Examiner's findings in Paragraph 9 in that

(a) They relate to a time prior to the passage of the National Labor Relations Act;

[fol.153] (b) They are immaterial;

(c) They are not fair, impartial or complete statements as to the evidence in the case in that the Board's Exhibit No 119 referred to in said paragraph showing that 33 out of 42 employees of the Respondent in said Salt Creek Field voted for "an employees' representation plan" and only 9 voted for "The Oil Field, Gas Well and Refinery Workers of America" was certified to not only by the said Jack Hainworth but also by Fred W. Fisher for the employees representation plan, and, in addition thereto, by Floyd Rowe and D. M. Brown for the "Oil Field, Gas Well and Refinery Workers of America" and by W. H. Rodgers for the Petroleum Labor Policy Board and by Seymour S. Bernfield, as Special Agent for the United States Department of the Interior;

(d) The Examiner, by direction or indirection, has based a finding of unfair labor practice upon the connection of the said Jack Hainworth with said 1934 election in the Examiner's statement, "The record does not disclose how he was chosen to act," intending thereby, without any basis in the evidence therefor, to impute some violation of law or some unfair labor practice to the Respondent; and

(e) Evidence as to matters occurring prior to the National Labor Relations Act was admitted over the objection of Respondent but only upon the understanding and ruling that the facts covered by such evidence were not introduced as evidence of violation of the National Labor Relations Act, but as historical matters only, and for this further

reason it is improper to base any finding of unfair labor practice under the National Labor Relations Act thereon.

3. Respondent excepts to the Trial Examiner's findings in Paragraph 10 in that

(a) They are immaterial;

(b) They are based upon evidence introduced over objections of the Respondent but only upon the understanding and ruling that they were not to be considered as the basis of a finding of unfair labor practice under the National Labor Relations Act; and

(c) They are not a fair and impartial finding and give evidence of prejudice and bias upon the part of the Examiner in that the said C. E. Martin in said paragraph referred [fol. 154] to, as shown by the evidence in this case, had nothing to do with the election in the Big Muddy Field held under the auspices of the Petroleum Labor Policy Board, but the certificate of said election is certified by Ernest Jones and John E. Spurgin for the Oil Field, Gas Well and Refinery Workers of America, and by P. S. Purcell and W. W. Cauffman for the "plan of joint representation of employees and management" and by W. H. Rodgers for the Petroleum Labor Policy Board, and Seymour S. Bernfeld, as Special Agent for the Department of the Interior; and

(d) The C. E. Martin referred to in said paragraph as certifying that said election was held in a "fair and impartial manner" was only one of six so certifying. C. E. Martin and Charles R. Smith certified in behalf of the "plan of joint representation of employees and management" and John Obrecht and Fred Golay for the Oil Field, Gas Well and Refinery Workers of America, and W. H. Rodgers in behalf of the Petroleum Labor Policy Board, and Seymour S. Bernfeld, as Special Agent of the Department of the Interior.

4. Respondent excepts to the Examiner's finding in Paragraph 11 to the effect that the circulation of the petition therein referred to was to some extent effected by J. G. Dyer for the reason that said finding is not established or supported by the evidence.

5. Respondent excepts to each and all of the Examiner's findings in Paragraph 13 upon the grounds

- (a) That they are immaterial;
- (b) That they relate to a time prior to the passage of the National Labor Relations Act;
- (c) That they in no way tend to support the charges in the complaint under hearing by the Examiner; and
- (d) That the finding that Mr. Shannon stated he had no authority to make any changes in the document therein referred to, if intended to relate to the manner in which said letter was addressed is not established or supported by the evidence, but is contrary to the evidence.

6. Respondent excepts to the Examiner's finding in Paragraph 14 in that it quotes part only of the September 18, 1934, letter written by R. S. Shannon and in that it is immaterial to any issues in this case, and in that by its omission [fol. 155] not only from the document itself but also in the reference to the evidence in the case as to transactions which preceded and followed the writing of said document it fails to properly disclose the situation then existing.

7. Respondent excepts to Examiner's finding in Paragraph 15 in that

- (a) It is a partial, incomplete and misleading reference to the September 18, 1934, letter document referred to;
- (b) It is not established or supported by the evidence as to the inference intended to be conveyed by the reference of the Examiner thereto; and
- (c) It is immaterial.

8. Respondent excepts to the Examiner's findings in Paragraph 16 in that

- (a) They are immaterial;
- (b) They are not established or supported by the evidence; and
- (c) They relate to a time prior to the passage of the National Labor Relations Act.



9. Respondent excepts to Examiner's finding in Paragraph 17 in that

(a) The finding that the petition therein referred to authorized Local Union 242 to represent the employees in Big Muddy Field is not established or supported by the evidence;

(b) The finding in said paragraph is not a fair and impartial statement as to said Board's Exhibit No. 29 in that the Examiner does not call attention to the fact that said exhibit requests the "Labor Disputes Board" to conduct an election to determine the choice of employees of their representatives for the purpose of collective bargaining;

(c) By said exhibit the employees who so signed said exhibit do not claim to be the exclusive representatives for collective bargaining purposes of all employees in said field; and

(d) The Examiner neglects to call attention to the undisputed evidence in the record that said exhibit was never filed with or exhibited to the Respondent.

10. Respondent excepts to the Examiner's finding in [fol. 156] Paragraph 21 that no reply was ever made to the Union on the proposals submitted as a result of the February 6, 1936, meeting therein referred to for the reason that said finding is not established or supported by the evidence.

10a. Respondent excepts to Examiner's finding in Paragraph 24 as to Shannon's statement as to his authority for the reason that finding is not established or supported by the evidence.

11. Respondent except to the Examiner's finding in Paragraph 25 that the only reason given for the transfers of Moore and Jones was that the field was to go on a 48-hour week for the reason that said finding is not established or supported by the evidence.

12. Respondent excepts to Examiner's finding in Paragraph 25 that Thomas was directly responsible for the selection of Moore and Jones, so far as the record shows, for the reason that said finding is not established or supported by the evidence.

13. Respondent excepts to the Examiner's finding in Paragraph 25 that no reply was ever received by the Union from Thomas or Shannon as to the transfers of Moore and Jones for the reason that such finding is not established or supported by the evidence.

14. Respondent excepts to the Examiner's finding in Paragraph 26 to the effect that the Union had considered opposing the extension of hours when it was rumored for the reason that said finding is not established or supported by the evidence.

15. Respondent excepts to the Examiner's finding in Paragraph 26 that when the increase of hours was made two of the seven members then in the Union had been ordered to New Mexico for the reason that the Examiner fails to point out the further fact, which is established by the evidence, that so far as the Respondent knew, the Union still had the big majority of employees in the Big Muddy Field indicated by the 1934 election held under the auspices of the Petroleum Labor Policy Board, and in that the Examiner fails to point out that the president of the Union in the Big Muddy Field and other Union employees in said field known to be such by the Respondent were not transferred, and in that the findings in said paragraph with [fol. 157] reference to Moore and Jones and the circumstances connected with their transfers are incomplete and do not properly reflect the evidence in the case relating thereto.

16. Respondent excepts to Examiner's findings in Paragraph 27 with reference to remarks alleged to have been made by J. G. Dyer for the reason that they are not established or supported by the evidence and consist of an inference drawn by the Examiner from the evidence which is contrary to and not supported by the evidence.

17. Respondent excepts to the Examiner's finding in Paragraph 29a in finding that the name of the Oil Field, Gas Well and Refinery Workers of America was changed to Oil Workers International Union and in concluding by inference therefrom that the Oil Field, Gas Well and Refinery Workers of America and the Oil Workers International Union were and are the same union or organization for the reason that such finding and inference is not established or supported by the evidence.

18. Respondent excepts to Examiner's finding in Paragraph 29a in that he fails to find from the evidence that the Oil Field, Gas Well and Refinery Workers of America and the Oil Workers International Union are separate and distinct unions or labor organizations.

19. Respondent excepts to the Examiner's findings in Paragraph 31 that a majority of the employees of the Respondent in the Big Muddy Field have ever designated the International Association of Oil Field, Gas Well and Refinery Workers of America as their representative for the purpose of collective bargaining for the reason that said finding is not established or supported by the evidence.

20. Respondent excepts to the Examiner's finding in Paragraph 31 that the International Association of Oil Field, Gas Well and Refinery Workers of America therein referred to is now the same organization as the Oil Workers International Union for the reason that such finding is not established or supported by the evidence and is contrary to the evidence.

21. Respondent excepts to the Examiner's finding in Paragraph 31 to the effect that at all times since August 12, 1935, the International Association of Oil Field, Gas Well and Refinery Workers of America has been the exclusive representative of all the employees of Respondent in the [fol. 158] Big Muddy Field for collective bargaining purposes for the reason that said finding is not established or supported by the evidence.

22. Respondent excepts to the Examiner's finding in Paragraph 31 that at all times since August 12, 1935, the Oil Workers International Union has been the exclusive representative of all employees in the Big Muddy Field for collective bargaining purposes for the reason that said finding is not established or supported by the evidence.

23. Respondent excepts to the Examiner's finding in Paragraph 31 that the International Association of Oil Field, Gas Well and Refinery Workers of America and the Oil Workers International Union, or either of them, have at any time since the month of June, 1937, represented a majority of the employees of Respondent in the Big Muddy Field for collective bargaining purposes in that said finding is not established or supported by the evidence.



24. Respondent excepts to Examiner's finding in Paragraph 32 to the effect that the International Association of Oil Field, Gas Well and Refinery Workers of America, on or about August 12, 1935, and at various times thereafter, or at any time, attempted to bargain collectively with Respondent as exclusive representative of Respondent's employees in Big Muddy Field for the reason that said finding is not established or supported by the evidence.

25. Respondent excepts to Examiner's finding in Paragraph 32 to the effect that on or about August 12, 1935, and at various times thereafter, or at any time, the Oil Workers International Union attempted to bargain collectively with Respondent as exclusive representative of Respondent's employees in the Big Muddy Field for the reason that said finding is not established or supported by the evidence.

26. Respondent excepts to the Examiner's finding in Paragraph 33 that on or about August 12, 1935, and at all times thereafter, or at any time, the Respondent refused to bargain collectively with the International Association of Oil Field, Gas Well and Refinery Workers of America as exclusive representative of Respondent's employees in the Big Muddy Field for the reason that said finding is not established or supported by the evidence.

27. Respondent excepts to the Examiner's finding in Paragraph 33 to the effect that Respondent refused to bargain collectively with the Oil Workers International Union as exclusive representative of Respondent's employees in the Big Muddy Field as the basis of the finding or conclusion of an unfair labor practice in that said finding is not established or supported by the evidence.

28. Respondent excepts to each and every of the Examiner's findings in Paragraphs 35 and 36 for the reason that

(a) They relate to transactions which occurred prior to the passage of the National Labor Relations Act;

(b) They are immaterial;

(c) They are not established or supported by the evidence; and

(d) They do not adequately reflect the relations between the Respondent and its employees at the Glenrock Refinery as reflected by the evidence.

29. Respondent excepts to Examiner's findings in Paragraph 37 in that he fails to find that the July, 1935, petition (Board's Exhibit 49) was in fact a petition for an election and in that the Examiner fails to find that the Respondent was never furnished with a copy of said petition nor was same exhibited to it, and in that no proof of the matters set forth in said August 12, 1935, letter was ever submitted to the Respondent, all of which is conclusively established by the evidence.

30. Respondent excepts to the Examiner's findings in Paragraph 39 upon the grounds that they are not fair and adequate findings of the labor negotiations between Respondent and the Union as conclusively established by the evidence.

31. Respondent excepts to the Examiner's findings in Paragraph 39 that none of the requests of the Union were granted for the reason that said findings are not established or supported by the evidence, and are contrary to the evidence.

32. Respondent excepts to the Examiner's finding in Paragraph 41 that a majority of its employees at the Glenrock Refinery designated the International Association of Oil Field, Gas Well and Refinery Workers of America as their representative for collective bargaining purposes with Respondent, for the reason that said finding is not established or supported by the evidence.

[fol. 160] 33. Respondent excepts to Examiner's finding in Paragraph 41 that a majority of its employees at the Glenrock Refinery had ever designated the Oil Workers International Union as their representative for collective bargaining purposes for the reason that said finding is not established or supported by the evidence.

34. Respondent excepts to the Examiner's finding in Paragraph 41 that at all times since August 12, 1935, or at any time since said date, the International Association of Oil Field, Gas Well and Refinery Workers of America has been the exclusive representative of the refinery employees of this Respondent for collective bargaining purposes for the reason that said finding is not established or supported by the evidence.

35. Respondent excepts to the Examiner's findings in Paragraph 41 that at all times since August 12, 1935, or at any time since said date, the Oil Workers International Union has been the exclusive representative of this Respondent's employees at its Glenrock Refinery for the reason that said finding is not established or supported by the evidence.

36. The Respondent excepts to the Examiner's finding in Paragraph 42 that the International Association of Oil Field, Gas Well and Refinery Workers of America has attempted on or about August 12, 1935, or at various times, or at any time thereafter, to bargain collectively with Respondent as exclusive representative of Respondent's employees at the Glenrock Refinery for the reason that said finding is not established or supported by the evidence.

37. Respondent excepts to the Examiner's finding in Paragraph 42 that the Oil Workers International Union has attempted, on or about August 12, 1935, and at various times, or at any time thereafter, to bargain collectively with Respondent as exclusive representative of Respondent's Refinery employees for the reason that said finding is not established or supported by the evidence.

38. Respondent excepts to the Examiner's finding in Paragraph 43 that on or about August 12, 1935, and at all or at any time thereafter, Respondent refused to bargain collectively with the International Association of Oil Field, Gas Well and Refinery Workers of America as exclusive representative of Respondent's employees at its Glenrock [fol. 161] Refinery for the reason that said finding is not established or supported by the evidence.

39. Respondent excepts to the Trial Examiner's finding in Paragraph 44 indicating that the sole reason for the necessity of reducing the working force in the Big Muddy Field was the increase in weekly hours, and not including as one of the reasons the concentration of powers used in the operation of wells in said field.

40. Respondent excepts to the Examiner's finding in Paragraph 44 as a basis of the finding of unfair labor practice in its reference to the statement made by Thomas in that it is not a complete, fair or impartial statement as to the testimony given by Thomas and others with



reference to the reasons for the transfers of Moore and Jones.

41. Respondent excepts to the Examiner's finding in Paragraph 45 to the effect that there is much confusion on the record as to the basis for the selection of the four men to be transferred for the reason that said finding is not established or supported by the evidence.

42. Respondent excepts to the Examiner's finding in Paragraph 45 that at the time there mentioned neither Canning nor Jackson was a member of the Union in good standing for the reason that said finding is not established or supported by the evidence.

43. Respondent excepts to the Examiner's finding in Paragraph 45 with reference to Canning and Jackson in that the evidence establishes that Canning and Jackson were each members of the Union, and in that if they were not in good standing, that fact was not known to Respondent.

44. Respondent excepts to the Examiner's finding in Paragraph 49 that on the record the only reason stated for the transfer of Jones and Moore was the extension of the work week for the reason that said finding is not established or supported by the evidence.

45. Respondent excepts to the Examiner's finding in Paragraph 49 that when hours were reduced no opportunity for employment was afforded to either Moore or Jones for the reason that said finding is not established or supported by the evidence, and for the further reason that the evidence does not show that either Jones or Moore asked for re-employment.

[fol. 162] 46. Respondent excepts to the Examiner's finding in Paragraph 49 that Jones was replaced by O'Neal for the reason that said finding is not established or supported by the evidence.

47. Respondent excepts to the Examiner's finding in Paragraph 49 that there is no sound basis for any complaint to the effect that Jones failed to maintain his lease properly for the reason that said finding is not established or supported by the evidence.

48. Respondent excepts to Examiner's finding in Paragraph 49 that the appearance of any lease on which Jones was working was due primarily to the activities of the pumper involved for the reason that said finding is not established or supported by the evidence.

49. Respondent excepts to the Examiner's finding in Paragraph 50 that the cause of the fire was never established; that defective equipment was partially responsible for the pump being down; that Bartels made the statement to Jones mentioned in said paragraph and that the incidents therein referred to occurred at the time stated in said paragraph for the reason that said findings are not established or supported by the evidence.

50. Respondent excepts to the Examiner's finding in Paragraph 52 to the effect that Moore got no satisfactory answer from Bartels for the reason that said finding is not established or supported by the evidence.

51. Respondent excepts to the Examiner's finding in Paragraph 53 to the effect that Moore felt the trouble was "organized labor" on the grounds that said finding is not established or supported by the evidence, and what Moore felt is immaterial.

52. Respondent excepts to the Examiner's finding in Paragraph 55 that except for one incident which occurred in 1925, no specific incident of any real significance is reported as to the unsatisfactory nature of Moore's work for the reason that said finding is not established or supported by the evidence.

53. Respondent excepts to the Examiner's finding in Paragraph 55 that there is no showing that Moore was ever disciplined or threatened with discipline for the reason that said finding is not established or supported by the evidence.

[fol. 163] 54. Respondent excepts to the Examiner's finding in Paragraph 56 that Ernest Jones was discharged for the reason that said finding is not established or supported by the evidence.

55. Respondent excepts to the Examiner's finding in Paragraph 56 that F. D. Moore was discharged for the reason that said finding is not established or supported by the evidence.

56. Respondent excepts to the Examiner's finding in Paragraph 56 that Ernest Jones and F. D. Moore, or either of them, were discharged for the reason that they or either of them, joined and assisted a labor organization referred to in said paragraph and engaged in activities in said paragraph mentioned for the reason that said finding is not established or supported by the evidence.

57. Respondent excepts to the Examiner's finding in Paragraph 56 that Ernest Jones and F. D. Moore, or either of them, have been refused employment by Respondent for the reason that said finding is not established or supported by the evidence.

58. Respondent excepts to the Examiner's finding in Paragraph 56 that Ernest Jones and F. D. Moore have been refused employment by Respondent upon the grounds in said paragraph stated for the reason that said finding is not established or supported by the evidence.

59. Respondent excepts to the Examiner's finding in Paragraph 57 in the nature of a recital that the Respondent discharged and refused to employ Ernest Jones and F. D. Moore for the reason that said finding or recital is not established or supported by the evidence.

60. Respondent excepts to the Examiner's finding in Paragraph 57 that this Respondent has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act upon the grounds in said paragraph stated, or otherwise, for the reason that said finding is not established or supported by the evidence.

61. Respondent excepts to the Examiner's finding in Paragraph 58 in the nature of a recital that the Respondent discharged and refused to employ Ernest Jones and F. D. Moore for the reason that said finding is not established or supported by the evidence.

[fol. 164] 62. Respondent excepts to the Examiner's finding in Paragraph 58 that the Respondent has discouraged membership in the labor organization therein mentioned upon the grounds in said paragraph stated, or otherwise, for the reason that said finding is not established or supported by the evidence.



63. Respondent excepts to the Examiner's finding in Paragraph 59 that in the summer of 1934 there was formed at the Glenrock Refinery the Plan for Employees' Council with the active participation of the Respondent, through Walter Miller, Vice President, for the purpose of representing that minority of the employees which had not voted for the Union in that

(a) Said finding is not based upon or supported by the evidence;

(b) Said finding is immaterial;

(c) Said finding relates to a matter which occurred long prior to the passage of the National Labor Relations Act;

(d) For some reason the Examiner failed to point out a fact which is conclusively established by the evidence that the Plan for Employees' Council from all times after its organization up until April of 1937 had as its members a majority of the Respondent's Refinery employees, and not a minority, as indicated by said finding; and

(e) The Examiner fails in this finding to call attention to the fact that the Union filed a charge with the Petroleum Labor Policy Board claiming that said Plan for Employees' Council was a company fostered and dominated union, and that a hearing was had on said complaint in November, 1934, and the Petroleum Labor Policy Board by its decision of February 21, 1935 (Respondent's Exhibit No. 1) expressly held that the Plan for Employees' Council was not a company fostered or dominated union.

64. Respondent excepts to the Examiner's findings in Paragraph 60 upon the grounds that they are immaterial and relate to a time prior to the passage of the National Labor Relations Act.

65. Respondent excepts to the Examiner's findings in Paragraphs 61, 62 and 63 based upon the April 30, 1937 letter from Miller to Tillman for the reason that said findings are not established or supported by the evidence and for the further reason that the evidence conclusively established that said letter was not exhibited to or seen by any of the Refinery employees, other than Tillman.

66. Respondent excepts to the Examiner's findings in Paragraph 68 in that they are incomplete and misleading in

stating that 14 employees present at the June 4 meeting affixed their signatures to the constitution and by-laws and that "thereafter additional signatures were obtained" and in failing to state that thereafter such a number of additional signatures were obtained to constitute a majority of all the Refinery employees, and that there have been no withdrawals from membership in said organization.

67. Respondent excepts to the Examiner's finding in Paragraph 73 that all requests submitted by the Independent Association of Conoco Glenrock Refinery Employees were refused for the reason that said finding is not established or supported by the evidence, and for the further reason that said finding is immaterial.

68. Respondent excepts to the Examiner's findings in Paragraph 75 upon the grounds that they are misleading and incomplete in that they fail to state, as shown by the evidence, that following said December 1 meeting with the Independent Association representatives and at the request of said representatives Mr. Miller met with all or a great majority of the employees of the Refinery in meeting assembled and addressed said employees and volunteered to discuss all questions submitted.

69. Respondent excepts to the Examiner's finding in Paragraph 76 that the Respondent, by its officers and agents, since May, 1937, formed and sponsored the Independent Association of Conoco Glenrock Refinery Employees as a labor organization of its employees for the reason that said finding is not established or supported by the evidence.

70. Respondent excepts to the Examiner's findings in Paragraph 78 that Respondent has dominated and interfered with the formation and administration of a labor organization of its employees at its Glenrock Refinery and has contributed support to said labor organization for the reason that said findings and each of them are not established or supported by the evidence.

71. Respondent excepts to the Examiner's finding in Paragraph 79 that in the month of December, 1936, 15 men [fol. 166] at Salt Creek signed applications for membership in the Union there mentioned and in that month, or the following month, made dues payments for the reason that said finding is not established or supported by the evidence,

and for the further reason that the evidence conclusively established that while W. M. Feaster applied for membership in said Union, he was never initiated, and notwithstanding that Feaster never became a member of said Union, he is included as one of the 15 mentioned in said Paragraph 79.

72. Respondent excepts to the Examiner's finding in Paragraph 84 that during the spring of 1937 Frisbey made frequent attempts to arrange a conference with the Respondent for the reason that said finding is not established or supported by the evidence.

73. Respondent excepts to the Examiner's finding in Paragraph 87 for the reason that the evidence shows that said authorization slips were never submitted to the Respondent and Respondent was at no time informed as to the execution or existence of said authorization slips and had no knowledge thereof, and consequently was not bound thereby.

74. Respondent excepts to the Examiner's finding in Paragraph 88 that the production employees of Respondent in the Salt Creek Field, exclusive of employees engaged in the gas compression and reduction plant constitute an appropriate unit for the purpose of collective bargaining within the meaning of Section 9(b) of the National Labor Relations Act for the reason that said finding is not established or supported by the evidence and is contrary to the evidence.

75. Respondent excepts to the Examiner's finding in Paragraph 89 that a majority of Respondent's employees in the Salt Creek Field designated the International Association of Oil Field, Gas Well and Refinery Workers of America as their representative for collective bargaining purposes for the reason that said finding is not established or supported by the evidence.

76. Respondent excepts to the Examiner's implied finding in Paragraph 89 that the International Association of Oil Field, Gas Well and Refinery Workers of America and the Oil Workers International Union are one and the same organization for the reason that said finding is not established by the evidence.

[fol. 167] 77. Respondent excepts to the Examiner's finding in Paragraph 89 that at all times since January 18,



1937, the International Association of Oil Field, Gas Well and Refinery Workers of America or the Oil Workers International Union has been by virtue of Section 9(a) of the Act the exclusive representative of all employees for the purpose of collective bargaining in the unit therein referred to for the reason that said finding is not established or supported by the evidence.

78. Respondent excepts to the Examiner's finding in Paragraph 90 that the International Association of Oil Field, Gas Well and Refinery Workers of America or the Oil Workers International Union attempted on January 19, 1937, and thereafter to bargain collectively with Respondent as exclusive representative, as in said paragraph stated, for the reason that said finding is not established or supported by the evidence.

79. Respondent excepts to the Examiner's finding in Paragraph 91 in that at the times in said paragraph mentioned, or at any time since, it has not been established that the employees of this Respondent in the Salt Creek Field, exclusive of those engaged in the gas reduction and compression plant constitute an appropriate unit for collective bargaining purposes, and in that the finding in said paragraph is not established or supported by the evidence.

80. Respondent excepts to the Examiner's finding in Paragraph 92 in that in the summer of 1934 Jack Hainworth officiated in connection with the Petroleum Labor Policy Board election for the reason that said finding is immaterial.

81. Respondent excepts to the Examiner's findings in Paragraph 93 that Hainworth and Feaster were taken to Casper in an automobile by Bowen and Kennelly for the reason that said finding is not complete in that it does not state, as established by the evidence, that that trip was made at the request of Hainworth and Feaster.

82. Respondent excepts to the Examiner's finding in Paragraph 93 that the result of the meeting was a heading suggested by Shannon to be used on the petition which was to be circulated by Hainworth for the purpose of forming an independent union for the reason that said finding is

misleading and incomplete in that, as established by the evidence, the petition therein referred to was to be circulated not only by Hainworth but also by Feaster and in that said finding does not state, as established by the evidence, that the heading for the petition therein referred to was outlined by Shannon only at the request of Hainworth and Feaster, and in that said finding does not state, as established by the evidence, that Shannon, Thomas, Bowen and Kennelly, or any of them, had absolutely nothing further to do with the organization of the said Continental Employees Bargaining Association, except the one meeting there referred to.

83. Respondent excepts to the Examiner's finding in Paragraph 94 to the effect that whether or not the typing was done during working hours does not appear from the record for the reason that said finding is not established or supported by the evidence and is contrary to the evidence.

84. Respondent excepts to the Examiner's finding in Paragraph 94 that the petition there referred to was typewritten by Hajny, the Clerk of the Production Department, for the reason that said finding is misleading and incomplete in that it does not state, as established by the evidence, what the duties of Hajny were, as such clerk, and the fact that under the constitution and by-laws of the International Association of Oil Field, Gas Well and Refinery Workers of America the said Hajny was eligible for membership in said Union, and in that said finding does not point out, as established by the evidence, that Hajny was not a supervisory or management employee, and in that it does not point out, as established by the evidence, that the typewriting of said petition by Hajny was done at the request of and pursuant to arrangements made with Hainworth and Feaster, and without any participation or knowledge thereof upon the part of the management of the Respondent.

85. Respondent excepts to Examiner's finding in Paragraph 95 that 21 signatures were affixed to the petition therein referred to for the reason that said finding is incomplete in that it fails to state, as established by the evidence, that the 21 signatures constituted a majority of the Respondent's employees in the Salt Creek Field, exclusive of supervisory employees.

86. Respondent excepts to the Examiner's finding in Paragraph 95 that to some extent the signatures were solicited on company time and in at least one case, that of Anderson, the signer was taken from his work with the [fol. 169] knowledge of his superior, in that said finding is not established or supported by the evidence.

87. Respondent excepts to the Examiner's findings in Paragraph 98 for the reason that they are misleading and incomplete in that they fail to state, as established by the evidence, that the reason that no organization was ever formally established and no name was ever adopted was that the members of the International Association of Oil Field, Gas Well and Refinery Workers of America in said field broke up the meetings called for the purpose of completing said organization and by force of their numbers and actions prevented the completion of said organization.

88. Respondent excepts to the Examiner's finding in Paragraph 98 that no organization was ever formally established for the reason that said finding is not established or supported by the evidence and is contrary to the evidence and is contrary and contradictory to the Examiner's finding No. 100.

89. Respondent excepts to the Examiner's finding in Paragraph 99 that the Respondent by its officers and agents sponsored the group of Salt Creek employees "for the purpose of bargaining with the company" as a labor organization of its employees for the reason that said finding is not established or supported by the evidence.

90. Respondent excepts to the Examiner's finding in Paragraph 101 that Respondent has dominated and interfered with the formation of the labor organization of its employees by the activities thereinbefore set forth and has contributed support to said labor organization for the reason that said finding is not established or supported by the evidence.

91. Respondent excepts to the Examiner's finding in that portion of the Intermediate Report numbered III and captioned, "Interstate Commerce," in so far as it relates to the operations of Respondent in the Salt Creek Field to the effect that the activities therein referred to occurring in



connection with the operations of Respondent in said Salt Creek Field have a close, intimate and substantial relation to trade, traffic and commerce among the several states and have led, and tend to lead to labor disputes burdening commerce and the free flow of commerce for the reason that said finding is not established or supported by the evidence.

92. Respondent excepts to the Examiner's finding in that [fol. 170] portion of the Intermediate Report numbered III and captioned, "Interstate Commerce," in so far as it relates to the operations of Respondent in the Big Muddy Field to the effect that the activities therein referred to occurring in connection with the operations of Respondent in said Big Muddy Field have a close, intimate and substantial relation to trade, traffic and commerce among the several states and have led, and tend to lead to labor disputes burdening commerce and the free flow of commerce for the reason that said finding is not established or supported by the evidence.

93. Respondent excepts to the Examiner's finding in that portion of the Intermediate Report number-d III and captioned "Interstate Commerce," in so far as it relates to the operations of Respondent at the Glenrock Refinery to the effect that the activities therein referred to occurring in connection with the operations of Respondent of said Glenrock Refinery have a close, intimate and substantial relation to trade, traffic and commerce among the several states and have led, and tend to lead to labor disputes burdening commerce and the free flow of commerce for the reason that said finding is not established or supported by the evidence.

#### As to the Examiner's Conclusions and Recommendations

94. Respondent excepts to the Examiner's conclusion in Paragraph 1 for the reason that such conclusion is not established, supported or justified by the evidence and is contrary to the facts and to the law.

95. Respondent excepts to each and all of the recitals of facts upon which the Examiner's conclusion in Paragraph 1 is based for the reason that said recitals and each of them are not established or supported by the evidence and are contrary to the evidence, and the conclusion in said paragraph is not supported by the evidence in the record.

96. Respondent excepts to the Examiner's conclusion in Paragraph 2 for the reason that such conclusion is not established, supported or justified by the evidence and is contrary to the evidence and to the law.

97. Respondent excepts to the Examiner's conclusion in Paragraph 3 for the reason that such conclusion is not established, supported or justified by the evidence and is contrary to the evidence and to the law.

[fol. 171] 98. Respondent excepts to the recitals of facts in Examiner's conclusion in Paragraph 3 that the Respondent discharged F. D. Moore and Ernest Jones, or either of them; that the Respondent refused to employ F. D. Moore and Ernest Jones, or either of them; that the Respondent discouraged membership in the International Association of Oil Field, Gas Well and Refinery Workers of America or in the Oil Workers International Union, and that the International Association of Oil Field, Gas Well and Refinery Workers of America and the Oil Workers International Union are one and the same labor organization for the reason that said recitals of facts are not supported or justified by the evidence and are contrary to the evidence and do not support the conclusion in said paragraph set forth.

99. Respondent excepts to the Examiner's conclusions in Paragraph 4 for the reason that such conclusion is not established, supported or justified by the evidence, but is contrary to the evidence and contrary to law.

100. Respondent excepts to the recitals of facts in Examiner's conclusion in Paragraph 4 that the Respondent dominated and interfered with the Independent Association of Conoco Glenrock Refinery Employees and the group of Salt Creek employees "for the purpose of bargaining with the company," or either of them, and that Respondent contributed support to said associations, or either of them, for the reason that said recitals of fact are not established or supported by the evidence but are contrary to the evidence and do not support the conclusion in said paragraph set forth.

101. Respondent excepts to Examiner's recommendation 1 for the reason that the findings of fact and conclusions on which said recommendation is based are not established or

supported by the evidence but are contrary to the evidence and are contrary to the law, and that said recommendation is improper and unwarranted.

102. Respondent excepts to each of the Examiner's recommendations in Paragraph 2-a for the reason that the findings of fact and conclusions on which each of said recommendations is based are not established or supported by the evidence but are contrary to the evidence and contrary to law, and that each of said recommendations is improper and unwarranted.

103. Respondent excepts to the Examiner's recommendation [fol. 172] in Paragraph 2-b for the reason that the findings of fact and conclusions on which said recommendation is based are not established or supported by the evidence but are contrary to the evidence and contrary to law, and that said recommendation is improper and unwarranted.

104. Respondent excepts to each of the Examiner's recommendations in Paragraph 2-c for the reason that the findings of fact and conclusions on which each of said recommendations is based are not established or supported by the evidence but are contrary to the evidence, and that each of said recommendations is improper and unwarranted.

105. Respondent excepts to the Examiner's recommendation in Paragraph 3-a for the reason that the findings of fact and conclusions upon which said recommendation is based are not established or supported by the evidence but are contrary to the evidence and contrary to law, and that said recommendation is improper and unwarranted.

106. Respondent excepts to each of the Examiner's recommendations in Paragraph 3-b for the reason that the findings of fact and conclusions on which said recommendations are based are not established or supported by the evidence but are contrary to the evidence and contrary to law, and that each of said recommendations is improper and unwarranted.

Respondent further excepts to each of the Examiner's recommendations in Paragraph 3-b and to the findings of fact and conclusions of the Examiner on which said recommendations are based for the reason that said recommendation and the findings of fact and the conclusions upon



which said recommendations are based are arbitrary, capricious, unjust and unreasonable and the enforcement of such recommendation will deprive this Respondent of its liberty, property and freedom of contract without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

107. Respondent excepts to each of the Examiner's recommendations in Paragraph 3-c for the reason that the findings of fact and conclusions on which said recommendations are based are not established or supported by the evidence but are contrary to the evidence and contrary to law, and that such of said recommendations is improper and unwarranted.

Respondent further excepts to the Examiner's recommendations in Paragraph 3-c and to the findings of fact and [fol. 173] conclusions upon which said recommendations are based upon the same grounds set forth in Exception 106 hereof.

108. Respondent excepts to each of the Examiner's recommendations in Paragraph 3-d for the reason that the findings of fact and conclusions on which said recommendations are based are not established or supported by the evidence but are contrary to the evidence and contrary to law, and that each of said recommendations is improper and unwarranted.

109. Respondent excepts to each of the Examiner's recommendations in Paragraph 3-e for the reason that the findings of fact and conclusions on which said recommendations are based are not established or supported by the evidence but are contrary to the evidence and contrary to law, and that each of said recommendations is improper and unwarranted.

110. Respondent excepts to the Examiner's recommendation in Paragraph 3-f for the reason that the findings of fact and conclusions upon which said recommendation is based are not established or supported by the evidence but are contrary to the evidence and contrary to law, and that said recommendation is improper and unwarranted.

111. Respondent excepts to the Examiner's final recommendation with no identifying number or letter, for the reason that the findings of fact and conclusions on which said recommendation is based are not established or sup-

ported by the evidence, but are contrary to the evidence and contrary to law, and that said recommendation is improper and unwarranted.

#### Further Exceptions

112. Respondent excepts to the failure of the Examiner to make findings of fact in its favor upon each and all of the charges alleged in the amended complaint, which charges and allegations were denied in the answer thereto, none of which charges and allegations are established or supported by the evidence, but are negated by the evidence.

113. Respondent further excepts to each and every finding of fact of the Examiner to which a specific exception is hereinabove made not only upon the ground that such finding of fact is not established or supported by the evidence but also upon the ground that such finding of fact is contrary to the evidence.

114. Respondent further excepts to the recital in Paragraph [fol. 174] graph (e) under the caption, "Pleadings," in the Intermediate Report wherein it recites that in the amended complaint it is alleged that the Respondent discharged and refused to reinstate Jones and Moore on or about April 27, 1938, whereas the allegation in the amended complaint gives the date as on or about April 27, 1936.

115. Respondent excepts to the action of the Examiner in admitting in evidence over objection of the Respondent, and thereafter basing findings of fact and recommendations thereon, facts concerning matters in the Big Muddy Field which occurred prior to August 12, 1935, for the reason that the amended complaint does not contain any charges based upon facts which occurred prior to said time, and all of such evidence is immaterial and its submission prejudicial to the Respondent.

116. Respondent excepts to the action of the Examiner in admitting in evidence over objection of the Respondent, and thereafter basing findings of fact and recommendations thereon, facts concerning matters at the Glenrock Refinery which occurred prior to August 12, 1935, for the reason that the amended complaint does not contain any charges based upon facts which occurred prior to said time, and all of such evidence is immaterial and its submission prejudicial to the Respondent.

117. Respondent excepts to the action of the Examiner in admitting in evidence over objection of the Respondent, and thereafter basing findings of fact and recommendations thereon, facts concerning matters in the Salt Creek Field which occurred prior to January 18, 1937, for the reason that the amended complaint does not contain any charges based upon facts which occurred prior to said time, and all of such evidence is immaterial and its submission prejudicial to the Respondent.

118. Respondent excepts to the action of the Examiner in finding any violation of the National Labor Relations Act on facts which occurred prior to the time the United States Supreme Court upheld the constitutionality of said Act on April 12, 1937.

119. Respondent excepts to the findings of the Examiner, to the conclusions of the Examiner, and to the recommendations of the Examiner that the Oil Workers International [fol. 175] Union at the time of the hearing of this case was the duly chosen representative of a majority of the employees of the Respondent in the Salt Creek Field for the following reasons, in addition to those set forth in other exceptions hereinabove made:

The evidence shows that at the 1934 election in the Salt Creek Field held under the auspices of the Petroleum Labor Policy Board a majority of the employees voted for the Employees Council Plan. The Examiner has found that in December, 1936, and January, 1937, 15 employees in the Salt Creek Field designated the Local 233 of the International Association of Oil Field, Gas Well and Refinery Workers of America as bargaining agency. This finding is not established or supported by the evidence but is contrary to the evidence, as only 14 such employees joined such organization and that number did not constitute a majority, irrespective of the appropriate unit question. In the summer of 1937 certain employees in the Salt Creek Field again designated Local 233 as the bargaining agency. However, in the summer of 1937 a majority of the employees in said field also designated the independent association as their bargaining agency. No further designations were made from that time up to the time of the hearing of this case. In view of the above facts the action of the Examiner in finding, concluding and recommending in favor of the International Asso-



ciation of Oil Field, Gas Well and Refinery Workers of America or the Oil Workers International Union as the bargaining agency is arbitrary, unjust, unreasonable and unwarranted. The limit of any recommendation by the Examiner should be an election of the employees in this field to determine their present choice of a bargaining agency with this Respondent.

120. Respondent excepts to the findings of the Examiner, to the conclusions of the Examiner, and to the recommendations of the Examiner that the Oil Workers International Union at the time of the hearing of this case was the duly chosen representative of a majority of the employees of the Respondent in the Big Muddy Field for the following reasons, in addition to those set forth in other exceptions hereinabove made:

The evidence shows that the last petition signed by any employees in the Big Muddy Field designating Local 242 of the International Association of Oil Field, Gas Well and Refinery Workers of America was circulated in the summer [fol. 176] of 1935. The evidence further shows that in the summer of 1937 a majority of the employees in said field signed a petition designating the independent association as their bargaining agency. The Examiner has found that said independent association is a labor organization within the meaning of the National Labor Relations Act. No charge against said independent association is contained in the amended complaint. For the above reasons the action of the Examiner in finding, concluding and recommending in favor of the International Association of Oil Field, Gas Well and Refinery Workers of America or the Oil Workers International Union as the bargaining agency in the Big Muddy Field is arbitrary, unjust, unreasonable and unwarranted, and contrary to the evidence in the case as to the choice of a majority of the employees in said field. At the most an election of the employees in this field to determine their present choice of a bargaining agency with Respondent is indicated and justified by the record.

121. Respondent excepts to the findings of the Examiner, to the conclusions of the Examiner, and to the recommendations of the Examiner that the Oil Workers International Union at the time of the hearing of this case was the duly chosen representative of a majority of the employees of the

Respondent at its Glenrock Refinery for the following reasons, in addition to those set forth in other exceptions hereinabove made:

At the election held in the summer of 1934 under the auspices of the Petroleum Labor Policy Board Local 242 of the International Association of Oil Field, Gas Well and Refinery Workers of America was designated by a majority of the Refinery employees. However, the evidence establishes that in 1934 after said election an Employees Council Plan was organized and that a majority of said employees joined said Employees Council Plan. The evidence further shows that said Employees Council Plan at all times thereafter had a majority of said Refinery employees in its membership. The evidence further shows that in the summer of 1937 Local 242 circulated another petition and secured some 42 or 43 signatures thereto, but that the circulation of said petition was voluntarily stopped when the petition was circulated for the organization of the Independent Association of Conoco Glenrock Refinery Employees. The evidence shows that a majority of said employees in the summer of 1937 joined said Independent Association of Conoco Glenrock Refinery Employees and that said association has at all times since had a majority of said employees in its membership. For these reasons the action of the Examiner in finding, concluding and recommending in favor of the International Association of Oil Field, Gas Well and Refinery Workers of America or the Oil Workers International Union as the bargaining agency at the Glenrock Refinery is arbitrary, unjust, unreasonable and unwarranted.

122. Respondent further excepts to the findings, conclusions and recommendations of the Examiner in favor of the Oil Workers International Union as the exclusive bargaining agency in its Salt Creek Field, its Big Muddy Field and at its Glenrock Refinery, and each of them, for the reason that said findings, conclusions and recommendations are based upon membership petitions and authorization slips which were executed such a long period prior to the filing of the amended complaint in this action and the hearing thereon that they do not show or reflect the choice of the employees for their bargaining agencies at the time the amended complaint was issued or the hearing had thereon; and the action of the Examiner in finding in favor of the

Oil Workers International Union as the bargaining agency for this reason is arbitrary, unjust, unreasonable and unwarranted.

123. Respondent further excepts to the action of the Examiner in finding, concluding and recommending in favor of the Oil Workers International Union for the further reasons:

(a) That the Oil Workers International Union and the International Association of Oil Field, Gas Well and Refinery Workers of America are not one and the same labor organization, and the finding of the Examiner that they are one and the same labor organization is not established or supported by the evidence, but is contrary to the evidence;

(b) That the evidence conclusively establishes that no employee of the Respondent at any time designated the Oil Workers International Union as his representative for collective bargaining;

(c) That the evidence conclusively established that at no time did the Oil Workers International Union ever attempt to bargain with Respondent in behalf of any of Respondent's employees; and

[fol. 178] (d) That there is an absolute departure from and variance between the charges made against this Respondent, the allegations in the amended complaint and the evidence and proof in the case in that said charges and amended complaint are based upon unfair labor practices relating to the Oil Workers International Union, whereas the evidence in the case relates solely to the International Association of Oil Field, Gas Well and Refinery Workers of America.

124. Respondent excepts to the action of the Examiner in finding an unfair labor practice in the Respondent's Salt Creek Field based upon an alleged failure to negotiate exclusively with the International Association of Oil Field, Gas Well and Refinery Workers of America or the Oil Workers International Union as representative of the employees in said field in a unit excluding the employees in the gas reduction and extraction plant for the reason that no such unit as an appropriate unit for collective bargaining purposes has heretofore, or has yet been established, and for the further reason that Case No. XXII-R-5 with which this



case was consolidated, involves the question of an appropriate unit in the Salt Creek Field for collective bargaining purposes and a petition for investigation and certification as to the proper bargaining agency for such unit is still pending and undetermined.

125. Respondent excepts to the action of the Examiner in overruling the Respondent's objections to the jurisdiction of the National Labor Relations Board set forth in the answer of Respondent to the amended complaint and renewed during the course of the hearing.

126. Respondent excepts to the action of the Examiner in overruling Respondent's objections to the introduction in evidence of Board's Exhibits 23 and 24, and each of them.

127. Respondent excepts to the action of the Examiner in overruling Respondent's motion that the hearing on the amended complaint be limited to charges which have arisen subsequent to the dismissal of the previous charges filed with Regional Director Pratt in 1936.

128. Respondent excepts to the action of the Examiner in refusing to sustain Respondent's motion to strike from the record the answers of the Board's witness, Gilbert Warren, consisting of hearsay and statements as to what his understanding was, which motion and denial thereof appear on page 537 of the official transcript.

[fol. 179] 129. Respondent excepts to the action of the Examiner in refusing to sustain Respondent's objections to the Board's introduction of evidence in an attempt to show that the Employees Council Plan at the Glenrock Refinery in existence prior to the passage of the National Labor Relations Act was drafted, sponsored, fostered and controlled by the Respondent for the reason that said fact, if established, was immaterial to the issues in this case, and for the further reason that said question is foreclosed by the decision of the Petroleum Labor Policy Board, and for the further reason that no such charge is contained in the amended complaint.

130. Respondent excepts to the action of the Examiner in admitting in evidence, over Respondent's objections, Board's Exhibits 104 and 105, (being membership application cards to, and secretary's dues report cards of, the International Association of Oil Field, Gas Well and Refinery

Workers of America), for the reasons that said exhibits do not support any charge or issue in this case in that the charges made are that the Respondent failed to collectively bargain with the Oil Workers International Union and not with the International Association of Oil Field, Gas Well and Refinery Workers of America, and upon the further ground that said exhibits are immaterial until the question of an appropriate unit in the Salt Creek Field shall first be decided.

131. Respondent excepts to the action of the Examiner in refusing to accept evidence in support of Respondent's offer of proof as to membership in Local 233 at different times, which offer is contained on page 831 of the official transcript.

132. Respondent excepts to the action of the Examiner in overruling Respondent's objections to the introduction in evidence of Board's Exhibit 106, being the proceedings of the Union convention in Kansas City in June, 1937.

133. Respondent further excepts to the action of the Examiner in basing a finding, conclusion and recommendation upon the Board's Exhibit 106 to the effect that the Oil Workers International Union is, by change of name only, the same labor organization as the International Association of Oil Field, Gas Well and Refinery Workers of America, and in not finding and concluding that said two labor organizations are separate and distinct organizations.

134. Respondent excepts to the action of the Examiner in admitting in evidence Board's Exhibits 116-a to 116-f, being [fols. 180-193] authorization slips made to Local Union 233, Salt Creek Field, in August, 1937, for the reason that they designate Local 233 of the International Association of Oil Field, Gas Well and Refinery Workers of America and not the Oil Workers International Union.

135. Respondent excepts to the action of the Examiner in permitting the Board, during the course of the hearing, to file an amendment to its amended complaint over the objections of Respondent for the reasons set forth in the objections made when said amendment was offered.

136. Respondent excepts to the action of the Examiner in permitting Board's witness, Frisbey, over Respondent's objections, to answer questions as to how the Sinclair Refining

Company conducts its labor negotiations, for the reason that said questions, as well as said answers, are immaterial.

137. Respondent excepts to the refusal of the Examiner upon Respondent's motion to strike questions with reference to an agreement between a union and the Sinclair Refining Company and in permitting the introduction in evidence of said agreement (Board's Exhibit 136) over Respondent's objection.

138. Respondent excepts to the action of the Examiner in refusing to sustain Respondent's motion to dismiss Case No. XXII-R-5 upon each and all of the grounds set forth in Respondent's motion to dismiss, which motion appears at pages 1905 et seq., of the official transcript.

139. Respondent excepts to the action of the Examiner in refusing to sustain Respondent's motion to discuss this Case No. XXII-C-4 upon each and all of the grounds set forth in the Respondent's motion to dismiss, which motion appears at page 1907 et seq., of the official transcript.

Dated this 21st day of May, A. D. 1938.

Respectfully submitted, Continental Oil Company, by  
Walter Miller, Vice President, Respondent. James  
J. Cosgrove, John R. Moran, John P. Akolt, Attor-  
neys for Respondent, Continental Oil Company.

[fol. 194] BEFORE NATIONAL LABOR RELATIONS BOARD

Thereupon the following testimony was introduced on behalf of National Labor Relations Board:

ALBERT D. SHIPP, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Shaw:

Q. State your name, please.

A. Albert D. Shipp.

Q. Where do you live, Mr. Shipp?

A. Cody, Wyoming.



Q. How long have you lived in Cody, Wyoming?

A. Since September 1, 1936.

Q. By whom are you employed?

A. By the Bureau of Reclamation.

Q. Of the United States Government?

A. Of the United States Government.

Q. How long have you been employed by that department of the Government?

A. Since September 1, 1936.

Q. In what capacity are you employed?

A. Supervisor of Labor Relations.

Q. What are your duties, generally speaking?

A. To handle disputes that might come up between employees and employers; to see that the labor provisions of the contracts are complied with, and I have supervision of safety.

Q. Mr. Shipp, prior to your employment with the Reclamation Bureau of the Department of the Interior of the United States Government, by whom were you employed?

A. By the International Association of Oil Field, Gas Well and Refinery Workers.

Q. And how long were you employed by that organization?

A. From August 1, 1934, to September 1, 1936.

Q. In what capacity were you employed?

[fols. 195-234] A. I was a District Representative.

Q. What were your duties as District Representative of The International Association of Oil Field, Gas Well, and Refinery Workers of America?

A. I represented the International Association of Oil Field, Gas Well, and Refinery Workers in this district, the Rocky Mountain district, in matters of organization, disputes between employees and the employers. In other words I acted as the representative of the employees and the Association.

[fol. 235] Q. On April 29, 1936, on or about that date, did you have a conference, you and the Workmen's Committee of Local 242 of the employees of the Big Muddy field, with Mr. J. C. Thomas, and Mr. R. A. Bartels?

A. What was that date again?

Q. April 29, 1936.

A. Yes, I think that was the date of the conference that we had.

Q. And where was this conference held?

A. At the field office at Parkerton.

Q. At the field office?

[fol. 236] A. Yes, sir.

Q. That is at Parkerton in the Big Muddy field?

A. That is correct.

Q. And what was the purpose of the meeting?

A. Why, the purpose of the meeting was taking up the discharge of two, or not discharge, the transfer of Union employees at that time.

Q. And what Union employees particularly?

A. It was Ernest Jones, and Mr. Moore.

Q. That is Dinty Moore?

A. Dinty Moore.

Q. What official position did these men hold in your Union?

A. Why, Mr. Moore was on the Workmen's Committee for the Local, and Mr. Jones was on the Workmen's Committee as Chairman of that Committee, and also Secretary Treasurer of the Union at that time.

Q. That is the financial secretary of the Union?

A. Financial secretary and treasurer of the Local Union at that time.

Q. How many men were there on the Workmen's Committee at that time?

A. There were three on that from the field.

Q. And who were they?

A. They were Ernest Jones, Dinty Moore, and Simon, I don't recall his initials.

Q. And two of these men were ordered transferred?

A. That is correct.

Q. Did you receive a report of this order of transfer from the men or the company?

A. The company.

Q. Or from either?

A. Yes, I did.

Q. From whom?

A. I think I received my first report from Dinty Moore.

Q. That was about the 29th, or the day before, was it?

A. I believe it was on the same date that we met with the management.

Q. On the 29th?

A. Yes.

[fol. 237] Q. Who arranged for the meeting?

A. I arranged for the meeting.

Q. Well, where were you told these men were to be transferred to?

A. To Hobbs, New Mexico, I believe.

Q. Then the purpose of this meeting was to take up the transfer of these men?

A. That is correct.

Q. Will you tell us what was said at the meeting? Go into detail as much as you can, and who said what.

A. Why, as I recall, Dinty Moore was present at the meeting, myself, and Charlie Erwin, the president of the local, and I asked Mr. Shannon for the cause of this transfer, if it was because they had anything against the men working in the field and he said no, that had nothing to do with it, and I called Mr. Shannon's attention to the fact that these men were both on the Workmen's Committee, and that it was weakening the collective bargaining position of the Union tremendously, and I asked him why these men were particularly singled out for this transfer, and, as I recall, he stated that he did not know why they were particularly picked out except that it was ordered, that this reduction of force and the orders that were coming, they were cutting down the force, and I believe Charlie Erwin at that time stated that there were rumors that the field was going on a forty eight hour basis, and he asked if there was anything to that rumor. We were told at that time then that the field was going on a forty eight hour basis the first of the following month, and that that was one reason for cutting down forces. And we asked Mr. Shannon why we were not given notice of this change in operation, as the company had set forth in their letter September 18, 1934, in outlining conditions that would remain in the field until they was changed, that 30 days' notice would be given of the company's intention to change conditions, and we were given no such notice, and also that we were trying to negotiate with the company on a matter of wages, hours and working conditions, and in these proposed agreements which had already been agreed to by the management of the field as reasonable, there were requests that covered seniority in that phase of operation, and we made a request that these transfers be held up, and also the forty eight hour week held in suspense, until such time as we could meet with some representative of the company who had authority to represent the company [fol. 238] in bargaining with us on these matters, and we



also asked Mr. Shannon if these transfers, or not Mr. Shannon, Mr. Thomas, if these transfers had been worked out by himself, and he said "no", that they were orders, that he wasn't in position to change them. Prior to that we asked if we couldn't go over these transfers in line of seniority, to determine whether these men should be in line for these changes, or some other parties, and he stated "no", that he would have no right to go into that phase. We asked him if he would attempt to arrange a meeting with an official of the company that could take these matters up, and if he would hold these matters in abeyance until that time, and he stated that he would get in touch with Mr. Shannon that evening, and try and arrange such a meeting, and let us know.

Q. Did you ever hear from Mr. Thomas on that?

A. We never did get any reply?

Q. Did you ever hear from Mr. Shannon, or any other official?

A. No, we never received any reply whatever.

Q. That meeting was on April 29, you said?

A. Yes.

Q. By the way, Mr. Shipp, was anything at that meeting brought up about the condition of the wives of both Mr. Moore and Mr. Jones?

A. Yes, there was. This transfer was of very short notice, as I recall, they only had, I believe it was two days to get to their destination and report. Mr. Moore's wife was sick in bed at the time, in quite a critical condition, or in a very critical condition, and Mr. Jones' wife was under the doctor's care, and had been for a number of months.

Q. Did you inform Mr. Thomas of that?

A. Yes, we did. He was informed of that.

Q. What did Mr. Thomas say to that?

A. He rather agreed that that should be a factor, as I recall, but said he would have no authority to hold up the transfers on that account.

Q. You said something about the letter of September 18, 1934, which provided for a 30 day notice to the employees of the change in working conditions. I show you that letter, which is "Board's Exhibit 27", and I show you the first paragraph of that letter which states as follows: I will just [fol. 239] read the first sentence to you: "In confirmation of our discussions today, this will outline our understanding of the working conditions which it is the intention of the

Continental Oil Company to have in effect in the Big Muddy district until such time as we have given 30 days' notice of our intention to change them''. Is that the provision you refer to?

A. That is the provision we had reference to.

Q. Mr. Shipp, in your capacity as organizer, with your background of experience in the field of labor relations, coupled with your feeling at that particular time, do you know what effect the giving of 30 days' notice would have had upon your Union at Big Muddy, of the change from a 36 to a 48 hour week?

Mr. Akolt: I object to that as being guesswork, and being immaterial if he did guess at it.

Trial Examiner Holden: Sustained.

Mr. Shaw: I think this man is unusually qualified to express his opinion, Mr. Examiner.

Trial Examiner Holden: The objection has been sustained.

Mr. Shaw: May we go off the record a moment please?

(Discussion off the record.)

Trial Examiner Holden: On the record.

Q. Was Mr. Shannon present at this meeting of April 29, 1936?

A. Mr. Shannon was not present at that meeting.

Q. At that meeting of April 29, 1936, Mr. Shannon was not present?

A. No, he was not present at that meeting.

Q. And that is the meeting that you have just described?

A. Yes.

Mr. Akolt: Let me ask a question, please. Where you heretofore have made statements with reference to that conference in which you stated that Mr. Shannon said so and so, you mean Mr. Thomas rather than Mr. Shannon, don't you?

A. If I did so state, I meant Mr. Thomas.

Q. Why did you want 30 days' notice to go into effect, the 30 day notice clause to go into effect, before this forty-eight hour week was put into effect?

[fol. 240] Mr. Akolt: Object to that as being immaterial.

Trial Examiner Holden: Objection is overruled.

A. The reason we wanted the notice was because the company had stated that such a notice would be given, because it would give us time to thoroughly take the matter up with the membership of the Union and see how they felt about it, and for a farther reason, probably a more substantial reason, the employees didn't organize just to have a sort of a fraternal body, they organized for purposes of working out wages and hours and working conditions with the Company, and it would have given them a chance to really put their organization into effect as it should be, and that reason in itself marks the difference between an organization that builds up and goes along, and one that doesn't.

Q. What do you mean by the statement that it might have given your organization a chance to build up?

A. Because it would give the employees a chance to express themselves on these matters in dealing with the company. The thirty days' notice would be for the purpose of going into these matters with the company to get their reasons why they had to go on a forty-eight hour week, it would give the membership a chance to counteract these things, and it would have thrown life into the organization, because it would give them a chance to do the type of work that a Union is created for.

Q. What do you mean by giving the membership a chance to counteract?

A. They would have been able to state their reasons why forty-eight hours a week wasn't necessary.

Q. And to exert whatever economic pressure was necessary to prevent it?

A. Yes, that would be correct.

Q. What effect occurred in your mind at that time, if any, of the lack of the thirty day notice, from the point of view of the organization of your Union?

A. Well, it was almost the difference in life and death.

Q. Why do you say that?

A. Because we had a small membership, a majority of the employees had designated the Union as their choice for collective bargaining, but unless they were able to make some progress in dealing with the company they didn't care about staying and marking time, and transferring these two [fol. 241] officers of the Union out of the field cut such a proportionate hole in the present membership, that it looked like it would be almost impossible to get another workmen's committee to function.



Q. What effect would you feel, from the point of view of the increase or decrease in your membership, the giving you of thirty days' notice would have had on the policy, that is thirty days' notice of the going into effect of the forty-eight hour week?

A. I don't believe I get your question just right.

Mr. Shaw: Withdraw the whole question, will you, please.

Q. What did you feel would have happened if the Company had given you thirty days' notice of its intention to put in a forty-eight hour week, from the point of view of the number of members you had?

A. Well, I believe it would have trebled our membership, just from the experience I have had with organizations. I believe it would have trebled our membership.

Q. Did you think that at that time?

A. I did.

Q. Were you well enough acquainted with the sentiment of the men in the Big Muddy Field to know what their attitude toward the forty-eight hour week was?

A. Yes, I was.

Q. What was that attitude?

A. They were very much against the forty-eight hour week, all of the men that I interviewed. They felt that it was improper at that time. There was still a lot of men out of work in the country. The difference of enumeration between the forty-eight hour week and the present working week they had was not sufficient in their estimation to cover the extra work that was put in. In other words, it meant quite a substantial reduction in the hourly rate of wages.

Q. At any time, in any manner, prior to the introduction of the policy of the forty-eight hour week in the Big Muddy Field, were you ever called into conference, or ever requested to attend a conference where the matter of the forty-eight hour week would be discussed by any official of the company?

A. No, I was not.

Q. Do you know whether or not, prior to the introduction of the forty-eight hour plan, the employees at the Big [fols. 242-269] Muddy Field had any opportunity offered in any manner by anyone connected with the Company to express any of their views concerning the forty-eight hour week?

A. Not to my knowledge.

[fols. 270-291] Cross-examination:

[fol. 292] Q. You were familiar, as indicated by your testimony, with the fact that on or about the last part of April or the first of May 1936 Continental went on a 48 hour weekly basis in the Big Muddy field?

A. Yes, sir.

Q. You were also familiar with the fact that as a result of going on a 48 hour weekly basis it was not necessary to have as many men working in the field as when they were on a 36 hour basis?

A. That is correct. It would be presumed that it would call for a reduction, yes.

Q. You are also familiar with the fact that the Continental Oil Company determined upon a reduction of four in number as the result of that change?

A. I believe there was a reduction of four about that time, yes.

Q. There was nobody discharged by the Continental in reducing that four in number, was there?

A. No, not that I recall.

Q. You knew, did you not, that the Continental Oil Company, notwithstanding the fact that it was reducing its force there, was attempting to take care of its men by moving them to other work that it had elsewhere?

A. I understood that they had transferred, yes.

Q. You knew that about the same time they were making transfers from the Salt Creek field also?

A. I can't say that I did.

Q. Were you personally familiar with the Big Muddy field?

A. Well, yes, fairly familiar.

Q. At about that time was not the Continental revising its method of operation so as to put the different wells on a central power plant rather than having individual power plants to pump the wells?

A. Yes, sir, they were.

Q. Now, leaving aside the question of increase in hours, which has been mentioned, the establishment of a central power plant pumping system would necessarily, or probably, cause a reduction in the working force, would it not?

[fol. 293] A. That is correct.

Q. And that would cause reduction both in the number, or justify a reduction, both in the number of pumpers as well as in the roustabouts, would it not?

A. It could, yes.

Q. And that was going on in this field at that time?

A. That is correct.

Q. Are you familiar with the oil code in force under the NRA?

A. Fairly familiar with it, yes.

Q. Did you know that under the oil code the Big Muddy field was what would be known as a stripper well field?

A. I believe the oil code calls for a designation of a stripper field, and I can't recall that the Big Muddy field has ever been designated as a stripper field.

Q. Prior to the adoption of the oil code, 48 hours was the prevailing weekly hourly basis in the oil fields, was it not?

A. That or more.

Q. As a matter of fact it was fifty-four in most places, wasn't it?

A. I believe that was about right, yes.

Q. In your Union activities in connection with the economic troubles in the oil fields around the country, while the Code was in force, don't you remember that there was a strike or two settled by the employees insisting on going back on the longer hourly basis?

A. I don't recall if there was.

Q. The Ohio Oil Company, as well as the Continental went on a 48 hour basis in the Big Muddy at that time, did it not?

A. As I recall the Ohio went on a short time later.

Q. In the Lance Creek field all the major operating companies went on a 48 hour basis, did they not?

A. That is, I believe, correct.

Q. That would cover the Continental, the Argo, and the other one.

Mr. Shaw: The Ohio.

Q. And the Ohio, in Lance Creek?

A. Yes, sir.

[fols. 294-298] Q. And in Salt Creek the Continental went on a 48 hour basis, did it not?

A. That is correct.



[fol. 299] Q. Now, let's get back to the reduction in force of the employees in the Big Muddy field on or about the last of April or the first of May 1936. There has been a charge made that transfers weren't made because of Union affiliations. The evidence now shows that of the 26 employees other than supervisory, then in the field in April 1936, all but three were either your Union men or if not your Union men had signed your July 1935 petition, is that correct?

A. That is correct.

Q. That July 1935 petition with the names on it had never been furnished with the company, had it?

A. No, it hadn't.

Q. Now, how would it have been possible for the Continental Oil Company to move four men without affecting, at least one man who would be a Union man or on your list?

A. I didn't claim that all those men were Union men on the list, in fact I stated that they were not all Union men.

Q. But you don't know who was Union and who was not Union, you say?

A. Well, not down to the man, no. I know that the majority on that list were not Union men.

Q. Well, put it this way, laying aside Union men, of which you had not advised the Continental who was Union and who was not, it would not have been possible for the Continental Oil Company to make the change in reducing the list by four without involving at least one of the men on your July 1935 list?

A. That is correct.

Mr. Shaw: That is "Board's Exhibit 29", I believe.

A. That is right.

Q. Now, of the men transferred at that time, how many turned out to be Union men, do you know?

A. Three.

Q. So there was one out of the three who was not on your list that was transferred?

Mr. Shaw: Excuse me, I object to the question. The witness has already testified, Mr. Examiner, that the names [fol. 300] of the men on his list were not Union men, not necessarily Union men, that they were men who authorized the Union to act for them. It is a very confusing question. I think the evidence will show that the name of everybody transferred was on that list. It has nothing to do with the

witness' previous answer that only three of the men were Union men.

Trial Examiner Holden: The record does not show who these four men were. May it so show at this time.

Mr. Akolt: We have got two of them, Moore and Jones. Can we agree on the other two?

Mr. Shaw: Canning and Jackson. You will find each of these men on "Board's Exhibit 29".

Mr. Thomas: I think that is correct.

Trial Examiner Holden: Objection is sustained.

Q. What was your position in making the complaint?

Trial Examiner Holden: Is that relevant?

Mr. Akolt: Yes. They say that we made transfers because of Union affiliations.

Trial Examiner Holden: Charges have been filed on which the Board asks action, and the hearing is now being held on a complaint by them, the findings to be based on the facts disclosed in these proceedings. So far as the Examiner can see the position the witness may have taken in filing the charge is not relevant to any issue before us.

Mr. Akolt: Let me ask this question.

Q. You filed the charges, didn't you?

A. No.

Q. You made the complaint while you were still District Representative, didn't you?

A. Yes, I made the complaint.

Mr. Shaw: I wish counsel would ask the witness whether he refers to complaint concerning refusal to bargain collectively or concerning transfer of these two men, and with what body the complaint was filed, whether with the National Labor Relations Board or with his International Union.

Trial Examiner Holden: May that be brought out on redirect?

[fol. 301] Mr. Shaw: I can bring it out on redirect, except that it would be more convenient at this time.

Q. Immediately upon the transfers being ordered in the latter part of April 1936, you took up with the Continental management the question of the reason for the transfer as to Moore and Jones, did you not?

A. I did.

Q. You made an objection, in behalf of your Union, to them at that time?

A. Yes, sir, I did.

Q. To whom did you make the objection?

A. To Mr. Thomas.

Q. To whom else did you make the objection beside the Continental management?

A. I can't recall making any complaint.

Q. Did you make any complaint on account of the transfers of Canning and Jackson?

A. I asked Mr. Thomas to go over all of these transfers with us, their seniority, and the reasons for making the transfers.

Q. Did you make any complaint on account of the transfers of Canning and Jackson?

A. No specific complaint, no.

Q. Were they Union men?

A. One of them was.

Q. Where were they transferred to?

A. To Salt Creek field.

Q. It was necessary, was it not, that the Continental Oil Company, if it was going to reduce its force by four, would have to either discharge the men or attempt to move them elsewhere in their own organization?

A. I believe so.

Q. That was one of the stated policies of the company in its September 1934 letter, was it not?

A. That they would be transferred?

Q. That they would attempt to find places for them, that is the substance of it?

A. I don't recall the exact wording in there, it possibly is.

Q. Some of these men were transferred to Lance Creek, [fol. 302] some to Salt Creek and some Salt Creek men were transferred to Lance Creek, were they not, and then some Big Muddy men to Salt Creek?

A. I wasn't familiar with the transfers out of Salt Creek at that time.

Q. You knew at that time, did you not, that the Leah County, New Mexico field in the Hobbs territory, was very active?

A. I knew there was some activity there, yes.

Q. As a matter of fact your own Union was quite active in that particular field, was it not?

A. I believe they had a Local there.



Q. Now, the order that came was that Mr. Moore and Mr. Jones would be transferred to the Continental field in Leah County, New Mexico, is that right?

A. That is my understanding, yes.

Q. You knew that they were to pay, the Continental Oil Company was to pay the expense of transferring the men including their family, furniture, and so forth, did you not?

A. They so instructed me, yes.

Q. Your experience in the oil industry shows that it is quite common for a man who remains in that game to be moved from one field to another?

A. I do.

Q. And that the companies generally, substantial companies at least, generally, in lieu of discharge, try to protect their older employees by giving them an opportunity to move to other fields where they are operating?

A. That is often followed, yes.

Q. You knew, as far as the Continental Oil Company was concerned, did you not, that there had been any number of transfers made from one field to another?

A. I knew of some, yes.

Q. And did you not know of some promotions that had been given to Union men by the Continental?

A. I don't recall any right at the present. There might have been.

Q. Well, it is alleged that there was discrimination in ordering these transfers of Moore and Jones, and you made complaint. Wherein was there a discrimination against the Union in ordering these transfers? Was it your position [fol. 303] that they should have transferred these three men who did not appear on your list, or of which the company had no knowledge?

A. Not necessarily. We did ask to go over the seniority of the men and the reason for making these two transfers. We didn't make any definite mention who should be transferred.

Q. I believe that you have heretofore admitted when you were district representative that the management of the company should primarily have the right to decide where its employees will work, isn't that correct?

Mr. Shaw: Mr. Examiner, I object to the question, if the counsel intends that it is to be preceded by the phrase "I believe you have admitted". I don't recall any such admission on the part of the witness.

Mr. Akolt: Not on the witness stand——

Mr. Shaw: Oh, excuse me, if you mean off the witness stand I have no objection.

Mr. Akolt: I am talking about conversation of Mr. Shipp in conference with the Continental Oil Company.

A. We have always tried to work out a form of seniority.

Q. Isn't it true that the Continental has recognized the general seniority principle, subject to the qualifications that were set forth in the September 1934 letters?

Trial Examiner Holden: Again the Examiner will ask you if this is relevant to any issues before it.

Mr. Akolt: I think it is most relevant. Let me state my position.

Trial Examiner Holden: Please.

Mr. Akolt: It is charged that in ordering these transfers we discriminated against the Union. Mr. Shipp is the one who represented the Union at that time, he made the complaint at that time to the Continental and he is the one who testified here on direct examination, as to these transfers, and to a feeling of some sort that was engendered in his mind, and perhaps in the minds of some others, that these transfers had something to do with the Union affiliation. Now, what could be more proper on cross-examination than to try to dig out the real reason for the charge of discrimination against the Union in ordering these transfers? [fol. 304] Trial Examiner Holden: It has been so charged, and so far as the Examiner is aware, that is for the Board to determine whether or not there has been a discrimination, which determination must be made on facts, and we are at this time getting no specific facts.

Mr. Akolt: I will ask the witness—what facts have you got, or did you have, that would show discrimination in ordering the transfers of these two men?

A. These two men were both officers of the Union. They had been in the field a long time, had a long service record, and we were only asking the Company to review these matters, and their reasons for specifically picking out these two men, Union officers, for transfer at that time, and we were denied that review.

Q. You were? So it is the denial of review, that you are relying upon as showing discrimination?

A. Partly, yes.

Q. And these three men in the field were men who had signed up this July 1935 slip, so that this question of seniority would involve all of your own men would it not?

Mr. Shaw: Mr. Examiner, I don't like to object like this but I am forced to when counsel keeps confusing the record, on the difference between a man who is a Union member and a man who signs a Union authorization. Now, there is a great deal of difference, and I submit that the question is improper, because that confusion exists in the question. Now, these people were not members of the Union, although they signed the petition, only a few were, as he said, he did not know who precisely was. There is a confusion there, and I don't think the question is proper.

Trial Examiner Holden: Let the question be read, please.

(Thereupon the question was read by the reporter.)

Trial Examiner Holden: The objection is sustained.

Mr. Shaw: May we go off the record a moment, please?

Trial Examiner Holden: Off the record.

(Discussion off the record.)

Trial Examiner Holden: On the record.

Q. Did you claim to represent all the men who had signed your "Board's Exhibit 29" petition?

[fol. 305] A. They had made the request to be represented by the Union on matters of collective bargaining, and we were claiming to represent these men in trying to draw up a collective agreement with the Company, but for that purpose only.

Q. So that, you were not then trying to protect non-Union men who had signed that petition of yours, as against any discrimination by transfers, is that correct?

A. We were not representing those men on specific things, no. We were representing them only in the matter of drawing up a collective agreement.

Q. Well, that is what I wanted to get clear. In view of that, maybe there is some merit to what Mr. Shaw said. In other words, the non-Union members, employees who signed that petition, were represented by your Union for only one specific purpose, namely for collective bargaining, and for any other purpose, including discrimination or anything else, why, you weren't purporting to represent them?

A. May I clear that up in my own words?



Q. Surely.

A. A lot of these men were not in the Union, and they stated as their reason that we hadn't been able to deal with the Company satisfactorily in arriving at any collective agreement, and they didn't care about staying in the Union unless we could bargain effectively with the Company, and in signing this petition it was their understanding that they were to be represented by the Union in drawing up such an agreement, and then they would be willing to go into the Union and be represented by the Union in matters that would come under such an agreement.

Q. To get back now, you had a meeting with the Continental Oil Company supervisory officers when these transfers of Moore and the other three were ordered, didn't you?

A. What is that?

Q. I say you had a meeting with Mr. Thomas, did you not?

A. Yes.

Q. You discussed the matter with him?

A. I did.

Q. Did you object to the transfer of the other two men, other than Moore and Jones?

A. I didn't make any specific objection, no.

Q. But you did object to Moore and Jones?

[fol. 306] A. To Moore and Jones.

Q. Did you suggest who you thought ought to be transferred, as long as a transfer was necessary?

A. I did not.

Q. What did you tell Mr. Thomas?

A. I asked that the matter be reviewed in regard to seniority, and to have Mr. Thomas state the reason why these two men were picked out for transfer. I also pointed out that these two men were on the Workman's Committee. We had only a very few Union men, and it would have a very intimidating effect on keeping the Workman's Committee into effect if it was necessary that these men were transferred, and that we were very much concerned, as a Union, over these two transfers.

Q. Did you tell Mr. Thomas how many Union men you had, to show how serious these transfers would be from the Union standpoint?

A. I don't believe I stated exactly, but stated we only had a few.

Q. You didn't tell him that the big majority in your, the letter you wrote to the Company in 1935, saying you represented a big majority of employees, you didn't tell him that they were not all Union men?

A. We asked that the matter be reviewed, we felt that these matters could very easily be brought out in review, but Mr. Thomas stated that he had no authority to do so, that he was ordered to put through these changes, and had no authority to alter it.

Q. This Committee you speak of, that changed from time to time, didn't it, that Union Committee?

A. They did.

Q. And certain members would be on the Committee for a month or two, and then other members would be on the Committee?

A. Usually for a six months' period. We had an election of officers every six months, and the Committee usually held over for that period, sometimes longer.

Q. One member of the Committee is still on, isn't he?

A. What is that?

Q. One of the men who was at that time a member of the Committee is still there?

[fol. 307] A. In the field?

Q. Yes.

A. Yes.

Q. Who is the President of the Union?

A. Erwin.

Q. The President of the Union wasn't moved, was he?

A. No.

Q. The President is the active head of the Union in the field, is he not?

A. I couldn't state that at this time.

Q. Well, he was during your time?

A. That is right.

Q. He was the real, not only President, but the active mover in the Union, wasn't he?

A. He was one of them.

Q. Now, you say that you asked for a review, and you say you got no review?

A. Not on these matters, no.

Q. Well, was Moore transferred?

A. He didn't accept the transfer.

Q. They offered to transfer him at Company expense to New Mexico, didn't they?

A. They did.

Q. A representation was made to Mr. Thomas through you that Mrs. Moore was sick, and under a doctor's care, is that correct?

A. I so stated, yes.

Q. And that was investigated, by Mr. Thomas?

A. I couldn't say as to that.

Q. That *that* was followed by an offer to transfer them to Fort Collins, or the Wellington field, Fort Collins, Colorado, was it not?

A. I believe so, yes.

Q. And the same question was raised, that he didn't want to move on account of the condition of his wife's health, is that correct?

A. I couldn't say. I didn't raise the question myself.

Q. You—what?

[fol. 308] A. I say, I couldn't say, I can't recall any meeting with Mr. Thomas wherein I raised that question.

Q. Raised which question, about Mrs. Moore's health?

A. Mrs. Moore's health about the second transfer.

Q. Well, you knew that Mr. Thomas investigated what you had told him, and what his investigation showed as to Mrs. Moore's condition of health, did you not?

A. No, I didn't.

Q. You knew did you not, that Mr. Shannon wrote a letter to Mr. Moore in which it was expressly stated that on account of the representation as to the condition of his wife's health, and the verification of that representation, the transfer offer was withdrawn. Did you know that?

A. I understood it was withdrawn. I am not acquainted with any such letter.

Q. Well, then, Mr. Shipp, if you understood that the transfer order was withdrawn, I am just wondering why you didn't state that in your direct testimony yesterday. You stopped, did you not, at the point where you said you could get no satisfaction out of the Company, that they refused to give you the right of review?

A. We were promised in the meeting with Mr. Thomas, when we were asking for a 30-day, that this be held up for a 30-day period, until such time as we could review the matter with some official of the Company that had authority to act on the 48-hour week and on both of these transfers. Mr. Thomas stated that he would get in touch with Mr. Shannon that night and would let us know right away. We



received no answer from that, either from Mr. Thomas or Mr. Shannon. That was what I had reference to.

Q. You received no answer, but you received results, namely, that the transfer orders were withdrawn, isn't that correct? And you knew it?

A. I can not say whether that was the result or not.

Q. Well, didn't Mr. Moore tell you that he had been notified that the transfer order had been withdrawn?

A. There was no farther dealings through Union, officially through the Union on that matter.

Q. Mr. Moore was one of your committee men, you said. He was notified, wouldn't that be sufficient, and he was the one that was to have been moved?

[fol. 309] A. The matter was taken up by the Union committee.

Q. Well, the objection is that they didn't formally write the Committee a letter in so many words, saying that the transfer was withdrawn, isn't that it?

A. We figured that they should continue to deal with the Union, yes.

Q. Well, let's get back again—and you knew within a week after the transfer order had been entered that it had been withdrawn?

A. I know that Mr. Moore was made that offer, yes.

Q. Within a week, approximately, or at least—

A. I couldn't give you the time it was made.

Q. And then after that transfer order had been withdrawn as a result of your efforts, why, Mr. Moore refused to stay with the Company, isn't that correct, and quit?

A. He refused to accept it.

Q. So he voluntarily quit the Company and went and got a job elsewhere, did he not?

A. Why, it could be so construed, yes.

Q. I am just asking that.

It is my understanding he went down and got a job at the State Penitentiary at Rawlins, is that correct?

A. He didn't accept the job that was offered him, for certain reasons, I understand. Therefore he terminated his services with the Company.

Q. Do you know whether the condition of his wife's health was such that he could or could not move her to Rawlins, if he accepted a position at the Rawlins penitentiary?

A. I couldn't state as to his wife's health at that time.

Q. Did she accompany him to Rawlins, do you know?

A. I am not certain.

Trial Examiner Holden: Off the record.

(Discussion off the record.)

Trial Examiner Holden: On the record.

The hearing is in recess until 2 o'clock.

(Thereupon at 12:30 P. M., the hearing recessed until 2 P. M.)

[fol. 310]

After Recess

(Thereupon hearing continued pursuant to recess at 2 P. M.)

Trial Examiner Holden: Hearing is continued.

Before proceeding the Examiner will again ask that every effort be made to confine the testimony in this proceeding to facts relevant to the issues herein involved, and although reluctant to interrupt counsel for either side, I shall ask for showing of relevancy when there is a question in my mind on that point. Please proceed.

(Cross-examination of Mr. Shipp continued.)

Q. One more question, please, Mr. Shipp, with reference to Mr. Moore. You knew, did you not, that the offer of transfer from the Big Muddy field to the New Mexico oil field involved a substantial increase in monthly income?

A. I did not know whether it would or not.

Q. You didn't know that?

A. No.

Q. Now, with reference to Mr. Jones, how well did you know Mr. Jones, and how long?

A. Oh, about three years, I should say.

Q. He was a pumper?

A. He was pumping at that time, yes.

Q. At one time, when you knew him, he had charge of pumping on a particular lease in Big Muddy?

A. Yes sir.

Q. And sometime before the time of this transfer, there had been a consolidation of tank batteries and boiler houses in the Big Muddy field?

A. There had been a consolidation going on, yes.

Q. And as a result of that consolidation, Mr. Erwin, the President of your Union, took charge of pumping on the particular lease which Mr. Jones formerly pumped?

A. I couldn't say as to that. Never checked into it to find out exactly how the field was consolidated.

Q. Well, you knew, didn't you, for some little time before this transfer, that Mr. Jones, on account of that consolidation had been only a relief pumper in the field?

[fol. 311] A. I do recall that there was something said about him being relief pumping, yes.

Q. Would you know what his relief seniority in the field was?

A. That would be according to what it would be based on.

Q. On the number of years he had worked in the field.

A. I understood that he had been in the field some ten or twelve years.

Q. How did he compare with Mr. Erwin, the President of the Union?

A. I couldn't say as to that.

Q. The transfer to the Continental New Mexico field, in Leah County, was offered to Mr. Jones at the same time it was offered to Mr. Moore?

A. It was.

Q. He refused that transfer, did he not?

A. He did.

Q. You also discussed that with Mr. Thomas, his transfer, at the same time you did Mr. Moore's?

A. Yes sir.

Q. Mr. Thomas took your suggestions up with Mr. Shannon with reference to Mr. Jones, the same as Mr. Moore?

A. As to that I couldn't say.

Q. Mr. Jones refused, did he not, to continue in the employ of the Continental subject to the transfer to New Mexico?

A. I don't believe he did refuse to continue in the employ of the Continental.

Q. I say subject to the transfer to the New Mexico field, I say he refused to accept the transfer to New Mexico?

A. Yes, he refused to accept the transfer to New Mexico.

Q. And to your knowledge he refused to go to New Mexico?

A. Yes sir.

Q. And what did he do after that?



A. What did Mr. Jones do after that time, after his termination with the Company?

Q. Yes.

A. He bought out a business there at Parkerton, a general store at Parkerton.

[fols. 312-315] Q. And he since owned and conducted that general store at Parkerton?

A. Yes sir.

Q. And Parkerton is a little town at the Big Muddy field?

A. That is right.

Q. In addition to running that general store, did Mr. Jones become Postmaster at Parkerton?

A. I understand that is correct.

Q. And so, since the date of this termination, he has run a general store and has been postmaster, and still is?

A. Yes.

[fols. 316-325] Redirect examination.

[fol. 326] Q. Do you know when Jackson was transferred?

A. Not exactly. It was prior to the *transference* of Moore and Jones, I believe, if I recall correctly.

Q. May I refresh your recollection by suggesting that he was transferred about April 1, 1936?

[fol. 327] A. I don't recall exactly, it might have been either before or after.

Q. You are not sure?

A. I am not sure.

Q. About how far is the Salt Creek field from the Big Muddy field, if you know?

A. Oh, about, by highway, about 60 or 70 miles.

Q. How far is it from the Big Muddy field to Hobbs, New Mexico, if you know?

A. Oh, I don't know, but it is quite a distance.

Q. Would you say it was as much as a thousand miles?

A. That would be about my guess.

Q. Did you object that the Company were transferring men, or cutting down operations, or was your objection that the selection of the men had been arbitrary?

A. It was our contention that the selection had been arbitrary.

Q. Did you have any conversation with Mr. Thomas and Mr. Bartels on that particular matter in your meeting of April 29, 1936?

A. I did.

Q. And what did they tell you about the selection of the particular men to be transferred?

A. Well, I asked Mr. Thomas if the selections were his, and he said no, he said it was ordered, and he said he would have no authority to make changes in that selection.

Q. What is the duty of the workmen's committee?

A. To take up matters that come between the employees and the Company governing discrimination.

Q. Can you tell us whether the workmen's committee is the same committee which other labor organizations refer to as a Grievance Committee?

A. It is. Usually referred to either as a Grievance Committee or a Workmen's Committee.

Q. Well, what is the group of men called who act as a representative of the men, as the employee representative of the men in negotiations with the Company, in your Union?

A. That is the representative.

Mr. Shaw: I will withdraw the question. It is confusing.

[fol. 328] Q. Are the Workmen's Committees under the duty of carrying on negotiations, collective negotiations with the employer.

A. Not unless they are assigned particularly for that purpose.

Q. What sort of things do they usually take up with the employer?

A. They usually take up grievances.

Q. You mean individual grievances?

A. Yes.

Q. How does it happen that the workmen's committee sat in with you on collective bargaining negotiations?

A. That was instructions from the Local.

Q. You were asked whether the personnel of the workmen's committee changes over a period of years. Do you know how long the workmen's committee of Ernest Jones, as Chairman, and F. D. Moore, and Everett Simons, served?

A. No, I couldn't state exactly, but it was quite a long time.

Q. May I refresh your recollection by telling you that they served consistently from the spring of 1934 down until April 1936?

Mr. Akolt: I don't quite grasp this refreshing his recollection by telling him things.

Trial Examiner Holden: Is that an objection to the previous question?

Mr. Akolt: Not to this one. But I may object to the next one.

Mr. Shaw: If I exhaust the witness's independent recollection, I can refresh it, I think.

Trial Examiner Holden: Proceed, there is no objection.

A. I believe that some of these same men were on almost continuous. I wouldn't say that the make-up of the committee was exactly the same during that time, all of that time.

Q. Who was chairman of the committee during that time, if you know.

A. Ernest Jones, I believe, was chairman during all of that time.

Q. Do you know what I mean by militant Union men?  
[fols. 329-338] A. Yes, I do.

Q. Define them.

A. A militant Union man is an aggressive type of man who goes out and really tackles the problems instead of just sitting into meeting or committees and making up numbers.

Q. Among the members of the various workmen's committees that you have observed as a representative of the employees in the Big Muddy field, who were the most militant representatives?

A. Well, Moore and Jones were very much more militant than any of the others.

Q. From what do you draw that conclusion?

A. They carried on more of the discussion in the meeting, they outlined cases, took action on them, investigated them, and in fact they carried on the work of the committee.

Q. What part did Simon play in the committee?

A. He sat in on the committee and observed quite closely, but he was not what I would term a militant member.



Q. I believe you said that in addition to being chairman of the workmen's committee, Ernest Jones was also financial secretary, is that correct?

A. That is correct.

[fols. 339-340] Examination.

By Trial Examiner Holden:

[fol. 341] Q. In reference to your meeting on April 29, I understand that your committee was told that these two men, Mr. Jones and Mr. Moore, had been selected for transfer, or the selection had been made, something to that effect?

A. Yes.

Q. Was any statement made to you as to the basis for that selection?

A. Only that there was consolidations being made.

Q. No, my question more directly is, any statement made to you as to the basis for selecting Mr. Jones and Mr. Moore?

A. No.

Q. Was any statement made to you as to who had made such selection?

A. No.

[fol. 342] ERNEST JONES, a witness called by and in behalf of the National Labor Relations Board, first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Shaw:

Q. State your name, please.

A. Ernest Jones.

[fol. 343] Q. Where do you live, Mr. Jones?

A. I live in Parkerton, Wyoming.

Q. How long have you lived there?

A. Since 1928, the last time.

Q. In what business are you engaged?

A. I have a store down there at the present time.

Q. Are you also postmaster at Parkerton, Wyoming?

A. I am.

Q. How long have you been engaged in your store business, Mr. Jones?

A. I believe I took the store the 15th of May 1936.

Q. How long have you been postmaster out there?

A. Just about a year following.

Q. You mean you got to be postmaster about May 1937.

A. When I got my appointment, yes.

Q. Prior to the time you were in business, you went into business in Parkerton, Wyoming, what business were you engaged in?

A. As a pumper, a relief pumper for the Continental Oil Company.

Q. What field were you engaged in your work?

A. Parkerton, Wyoming.

Q. And what is the common name of that field?

A. Big Muddy.

Q. How long did you work for the Continental Oil Company prior to April 27, 1935?

A. I worked steady for them from the/spring of 1926, I believe.

Mr. Shaw: Mr. Examiner, I gave the wrong date. I meant April 27, 1936.

Q. You worked steadily for them from what time?

A. I worked steadily for them from some time in the spring of 1926.

Q. Had you worked for the Continental Oil Company prior to 1926?

A. I had.

Q. When?

A. I went to work for them, I believe, in September 1924.  
[fol. 344] Q. And where did you go to work for them at that time?

A. Salt Creek, Wyoming.

Q. And how long did you work in Salt Creek?

A. I believe nearly a year.

Q. And what job did you have at that time?

A. I was a roughneck on a rotary rig, or a rotary helper, commonly called roughneck.

Q. And how long were you a roughneck on the rotary rig?

A. Until they shut down the well. That was somewhere near a year, I don't know the exact time.

Q. And what did you do at that time?

A. I went to work for the Carter Oil Company for a short while. For a while I didn't do anything, then I went to work for the Carter Oil Company.

Q. How long did you work for the Carter Oil Company?

A. I don't know the exact date of that.

Q. Well, was it approximately a year or two, or what?

A. No, it wasn't near that long.

Q. You say you went back to work for the Continental in 1926, is that correct?

A. I believe that is correct.

Q. And what field did you work in at that time?

A. Big Muddy.

Q. And have you been steadily in the Big Muddy field from 1926 on?

A. In June 1927 I was transferred to Waldon, Colorado.

Q. Mr. Jones, what job did you have between 1926 and 1927 at the Big Muddy field?

A. Same job, I was back on the rotary.

Q. Roughneck on a rotary?

A. No, working derricks and firing, and on the floor.

Q. And when you went to Waldon, Colorado, what job did you take?

A. I believe I worked, I was firing boilers most of the time in Waldon, Colorado.

Q. How long were you in Waldon, Colorado?

A. I was in Waldon, Colorado until October 4 of that year.

Q. Of 1927?

A. Yes.

[fol. 345] Q. And what happened then?

A. I was in a rig accident, and was in the hospital from that time until some time in January, when I went back to work.

Q. Some time in January 1928?

A. 1927.

Q. Well, you were transferred there in June 1927 weren't you?

A. Yes.

Q. And you were in the hospital from January 1927 until January—

A. January 1928, excuse me.



Q. And then what did you do?

A. Fired boilers.

Q. Whereabouts, back in Waldon?

A. In Waldon, Colorado.

Q. How long did you continue to work in Waldon, Colorado?

A. Until August 1928.

Q. What happened to you then?

A. Transferred back to Big Muddy.

Q. And when you came back to Big Muddy in August 1928, what job did you go on?

A. Working in the shop with Bert Fuller as foreman.

Q. How long did you work in the shop?

A. I don't remember how long I worked in the shop.

Q. What was the nature of your work in the shop?

A. Cutting threads on pipe, or any work that there was to do in the shop.

Q. And you don't recall how long you worked there?

A. No, I don't.

Q. Can you give us the approximate time, a year or two, or a few months, or what?

A. Very few months.

Q. And after you left off working in the shop, what job did you go on in the Big Muddy field?

A. I went out on the well pulling crew.

Q. And how long did you work on the well pulling crew?

A. I don't remember.

[fol. 346] Q. Approximately, can you tell us?

A. No, I can't.

Q. Well, was it a year or two, or a month?

A. No, it was a short while.

Q. And after you left the well pulling crew, what job did you go on?

A. I went, I believe, I helped build and tear down tanks for a while.

Q. And was that a long while or a short while?

A. A short while.

Q. And what was your next job in the Big Muddy field?

A. In 1929, I don't remember the dates, it was in the fall, I believe November, close to it, I was given a lease to pump, and moved down from the camp where I was working and on that lease.

Q. And you moved down there as a pumper in 1929, is that right?

A. Right.

Q. And how long did you remain on that lease as a pumper?

A. Until some time in the spring of 1935, I believe, I am not positive of that date.

Q. And what happened then?

A. I was put on as a relief pumper to relieve Mr. Erwin and Mr. DeClue.

Q. And how long were you acting as a relief pumper, relieving Mr. Erwin and Mr. DeClue?

A. Until April 1, 1936.

Q. April 1?

A. Well, I had three days off, it was April 27 that I was given notice of the transfer to Hobbs, New Mexico, and I had three days off and took those three days.

Q. So you mean May 1st instead of April 1st, do you not?

A. Yes that would be May 1st.

Q. 1936, is that right?

A. That is right.

Q. Now, summing up, you were continuously in the employ of the Continental Oil Company at the Big Muddy field from August 1928 until May 1936, is that right?

A. That is correct.

[fol. 347] Q. And you were continuously in the employ both at Big Muddy and Waldon, Colorado from 1926 until April 1936, is that correct?

A. That is correct.

Q. How old are you, Mr. Jones?

A. Thirty seven.

Q. Are you a member of Local 242 of the Oil Worker's International Union?

A. I am.

Q. When did you join that organization?

A. November 1933.

Q. Were you a charter member of that organization?

A. I was.

Q. Do you hold any office in that organization at this time?

A. Yes, I believe I do.

Q. What office do you hold?

A. Secretary and treasurer, and on the Workmen's Committee.

Q. You say secretary and treasurer, do you mean recording secretary or financial secretary?

A. Financial secretary and treasurer.

Q. How long have you held that office?

A. I was elected in that office in June 1935, I believe.

Q. And you have served continually since that time?

A. I have.

Q. In that capacity?

A. I have.

Q. You are still a member of that organization?

A. I am.

Q. In good standing?

A. I am.

Q. Have you ever dropped out of good standing in the organization since the time you joined it?

A. I have not.

Q. You said you were a member of the Workmen's Committee. Is that right?

A. I am.

Q. When were you appointed or elected a member of the Workmen's Committee of Local 242?

[fol. 348] A. Some time in 1934, I couldn't give you the exact date now.

Q. In 1934?

A. 1934.

Q. May I suggest that it was February 1934, would that be correct or not?

A. It was in the early part of 1934, but I couldn't swear to the date, unless I would look it up.

Q. And how long have you served on the Workmen's Committee?

A. I have served on it from that date until this.

Q. Continuously?

A. Continuously.

Q. Did you occupy any office on the committee?

A. I was chairman.

Q. Were you chairman continuously from November 1934 until the present time?

A. I was.

Q. Were you ever a delegate to the Oil Workers Council for the State of Wyoming?

A. Yes, sir.

Q. When were you a delegate to that organization?

A. I believe I was elected delegate to the Oil Workers Council some time in the middle part of 1934.



Q. And how long did you remain as a delegate to the Council?

A. I am still a delegate.

Q. Do you attend the meetings?

A. I do, but I haven't all of them, in recent years, the recent two years, for the reason they changed their meeting place, and now at times meet in Salt Lake City and different places, I am not able to go.

Q. What is the nature of that organization?

Mr. Shaw: May we go off the record, a moment?

Trial Examiner Holden: Off the record.

(Discussion off the record.)

Trial Examiner Holden: On the record.

Q. Who composed the organization?

[fol. 349] A. The organization was composed by the individual Locals through the committee in different states.

Q. Different states of the Rocky Mountain Division?

A. Rocky Mountain Division, yes.

Q. Each local Union had one representative, is that correct?

A. No, you were allowed more than one representative.

Q. In proportion to your membership?

A. In proportion to the amount of your membership. We have more than one representative in there.

Q. Who else from your Local Union was a representative to that?

A. Charles Erwin, Manley Miller, E. A. Olson. I don't remember, there are some more of them, but I don't remember their names.

Q. Were you ever vice-president of your organization?

A. I was.

Q. During what time, do you know?

A. During the early part of 1934.

Q. How long did you remain vice-president?

A. I believe six months.

Q. Did you attend your Union meetings regularly?

A. Yes, I did.

Q. Do you now?

A. Yes sir.

Q. Talking for a moment about the Workmen's Committee, you say you served on it from some time in February

1934 until now as chairman. What were your duties for the Workmen's Committee?

A. My duties on the Workmen's Committee were to try and effect contracts and take up working conditions, wages and hours, with the Continental Oil Company.

Q. Did you have conferences with representatives of the Continental Oil Company for that purpose?

A. We did.

Q. Was Mr. Shipp present at all of those conferences with you?

A. I believe he was. I wouldn't state absolutely on that, the different dates, but I believe that Mr. Shipp was present at all those meetings.

[fol. 350] Q. Have you been in this court room since the hearing opened yesterday at ten o'clock?

A. Yes, I have.

Q. Did you head Mr. Shipp's testimony?

A. I did.

Q. Do you recall any meeting with representatives of the management at which you were present, that Mr. Shipp did not mention?

A. No, I don't.

Q. Did you in your committee meet with the representatives of the management on so-called minor matters without Mr. Shipp.

A. I don't believe that we ever did. We may have.

Q. Mr. Jones, there is a statement here that your Local, Local 242, has part of its membership not only among the employees of the Big Muddy field, but also among the employees of the refinery, is that right?

A. That is correct.

Q. Did you have separate Workmen's Committees for each department of the Continental Oil Company?

A. We have separate working committees, but the president of the Local is designated as being able to attend either meeting.

Q. He is a sort of a member ex officio of both committees?

A. He is.

Q. Did he customarily attend the meetings?

A. I believe he was refused attendance of the meetings when at the refinery, and once in a while he attended meetings at the field.

Q. Not regularly, however, or was it regular?

A. I don't believe he was there regularly, no.

Q. Did you participate in an election held by the Petroleum Labor Policy Board in the Big Muddy field in July 1934?

A. I believe I did, yes sir.

Q. After that election was conducted did you have a conversation with Mr. Dyer?

A. Yes, sir, I did.

Q. Where was that conversation held?

A. It was down on my lease by the boiler house.

Q. Who was present?

[fol. 351] A. Mr. Dyer and myself.

Q. What time of day did it occur?

A. I believe it was early in the afternoon, I couldn't say.

Q. What was the number of your lease?

A. Glenrock sheep lease.

Q. Can you tell us what the conversation was, please?

A. Mr. Dyer said they had a petition there they were getting signers on for an organization of the employees there at the field, wanted me to sign this petition.

Q. Was that all the conversation?

A. I refused to sign the petition. We talked about different matters in the field, I don't remember just what they pertained to. Amongst the conversation the matter of coupon books was brought up and discussed. Mr. Dyer afterwards left and went somewhere else. I don't remember the whole conversation. I recall that I asked him if my job would be alright, as I hadn't signed the petition, and Mr. Dyer said yes, my job was okay.

Trial Examiner Holden: Off the record.

(Discussion off the record.)

Trial Examiner Holden: On the record.

Q. What is a coupon book, Mr. Jones?

A. A coupon book is a book issued by the Continental Oil Company, made up of slips representing from one cent to, I believe, one dollar, which can supposedly be traded for gasoline and oil.

Q. How did this come up in relation to this discussion with Mr. Dyer?

A. He mentioned, or I mentioned conditions of the field, and I was very much against selling coupon books to the employees under certain conditions, considerations, that the employees were taking the coupon books, trading them for



groceries, and also selling them to get cash from them, and taking a reduction in the price of the books that they paid ten dollars from their pay checks for.

Q. Did you employees have a quota of the number of books you were supposed to buy, do you know?

A. My quota that year was 2 books a month.

Q. What do you mean by your quota?

[fol. 352] A. That I was supposed to either sell, take, or dispose of, I don't know just what.

Q. Was that a common practice among the employees in the Big Muddy field?

A. It was.

Q. Was it a source of grievance to your organization?

A. It was.

Q. Did the practice continue up until you were, until your services with the Company were terminated in May of 1936?

A. The practice continued, but I didn't take very many more coupon books.

Q. I show you "Board's Exhibit 58", purporting to be a mimeographed letter bearing the typewritten signature of R. S. Shannon, Superintendent, Rocky Mountain Division, directed to Mr. Ernest Jones, under date of September 15, 1934, and ask you if you received that letter.

A. Correct.

(Thereupon the document above referred to was marked as "Board's Exhibit 58 for identification", witness Jones.)

Mr. Shaw: I ask that "Board's Exhibit 58 for identification" be admitted into the record as "Board's Exhibit 58."

Trial Examiner Holden: Without objection?

Mr. Akolt: Yes.

Trial Examiner Holden: It is received.

(Thereupon the document above referred to, previously marked as "Board's Exhibit 58 for identification", witness Jones was received in evidence.)

Q. Mr. Jones, is Well 28 on your lease?

A. It is.

Q. In the field near Well 28, on or about the 26th of February, 1935, did you have a conversation with Mr. Bartels?

A. I did.

Q. Will you give us that conversation, please?

A. I was going from Well 28 to another well a short distance from it, when Mr. Bartels drove up and asked me if

my engines were all right. I told him no, they needed some work done on them, and Mr. Bartels said he didn't mean if they needed work on them, he meant if they were clean. I [fol. 353] told him no, the wells were not clean, and he said "Well, why aren't they?", and I told him that I had too much work to do, and it was impossible to keep the engines clean, on account of the condition of the engines themselves. And he said "Well if Mr. Shannon comes by and your lease doesn't pass inspection, we will let you go and get somebody down here that can keep them clean."

He said, "It looks like the Union boys gave me a trimming down here."

Q. Was there anybody else present at that conversation?

A. Nobody else present at that meeting.

Q. Was that the end of the conversation?

A. That was the end of the conversation, and he drove off.

Q. Around the middle of March 1935, at Well No. 37, did you have a conversation with Mr. Bartels?

A. Well, I don't know whether that is the exact date or not, but I did have a conversation with Mr. Bartels at that well.

Mr. Akolt: What well?

A. Well 37.

Q. What was that conversation?

A. I had been filling the water tank, I had started that well up that morning. As I walked up on the derrick floor he asked me if the well had run that night, and I told him no, the well hadn't, and he said "Well, you are fired." I told him all right, and he started to say something, and he shook his finger in my face, and said "Well, you're fired, and no excuses for not running that well." He went out and got in his car, and I followed him, and I told him there was one thing I wanted him to remember, that it was impossible to keep water in that water tank, there being so many holes in it, and the water tank rotted out, and also a leaky line to fill the water tank with, and that he had promised me ever since I had come down on that lease that he would have that fixed. I had asked him about it more than once, and he told me that it didn't make a God damn bit of difference to me what he said he'd do.

Q. Was that the end of the conversation?

A. That was the end of that conversation.

Q. Did you continue working, or did you go away?

[fol. 354] A. I beg your pardon. It wasn't the end of the conversation, I told Mr. Bartels that I would go down and *and* finish my work until noon, finish up what I had started.

Q. Later on that day, about thirty minutes later on, did you have another conversation with Mr. Bartels?

A. I did.

Q. At the boiler house?

A. At the boiler house.

Q. On your lease?

A. On my lease.

Q. Will you give us that conversation?

A. Mr. Bartels drove down to the lease, and said "Now that we have both cooled off" he wondered if I wouldn't admit that I was wrong. I told him no, that I wouldn't. I don't remember, there was a little more conversation there, but I don't remember exactly what it was.

Q. Well, did he—

A. And he told me, in between this, he told me "Well, if you quit your Union foolishness and do a little more work, why, you could go ahead with your job."

Q. What did you say to that, Mr. Jones?

A. I told him as far as my working conditions were concerned, that I had always done an honest day's work, and more, for the Continental Oil Company.

Q. Did he say anything to you about working overtime?

A. He did.

Q. What was that?

A. He said "You Union men are afraid to put in too much overtime", and I told Mr. Bartels that we did put in overtime, but he just didn't know anything about it, and I started telling him where I had put in overtime, and he said "Well, we don't want the boys to put in any overtime, it isn't the Continental's Policy to do that."

Q. Well, were you fired, or did you keep on working then, or what happened to you?

A. There wasn't anything more said about it. I went back home that evening and they didn't send my check down to me, and I went out to work the next morning. I didn't see Mr. Bartels for about two weeks.

Q. Did you lose any time?

[fol. 355] A. I did not.

Q. Did you lose any pay?

A. I did not.



Q. Now, as I understand it, sometime in the spring of 1935, you were transferred from pumper to relief pumper, is that correct?

A. That is correct.

Q. And that was the result of consolidation in the field, was it?

A. That is right.

Q. And I believe you said you were relieving for Charlie Erwin, and a fellow by the name of Slim DeClue, is that right?

A. Slim DeClue, that is right.

Q. And you worked there from the spring of 1935 until April 27, 1936, is that correct?

A. That is correct.

Q. Now, on April 27, 1936, what happened to you?

A. I was given a transfer to Hobbs, New Mexico.

Q. Tell us how you were informed of the transfer, and the situation surrounding your notification.

A. Mr. Bartels came on the lease, and was talking to me a short while about the lease. I was draining a stock tank at the time, I believe, and talked a few minutes and left.

Q. What time of day was this?

A. That was along late in the afternoon, I judge three o'clock or so, a little earlier. He came back a few minutes afterwards, it wasn't very long, and told me that they had a transfer for me to Hobbs, New Mexico.

Q. Now, he told you about the transfer in the first or second conversation?

A. Second conversation.

Q. Did he say anything about it in the first one at all?

A. He did not.

Q. Proceed, I am sorry.

A. And I told him that I didn't see that I could take that transfer to Hobbs, New Mexico, it looked to me like it was a let-out from the Company, and he said no, he didn't want me to feel that way about it at all, that it wasn't a let-out, they were transferring me to Hobbs, New Mexico, because they intended to make some drastic changes in the field, and to [fol. 356] give me a job, and I asked him if, under the circumstances, that, my wife being sick with eczema, that, why, somebody else couldn't be transferred down there instead of me, and he said he didn't know.

Q. Well, did he give you any instructions about when you were to be in Hobbs, New Mexico, or how you were to get there?

A. He said that I was to be in Hobbs, New Mexico, the following Monday morning, that I was to get ready and go at once. I told him that was an impossibility, that I had a few business dealings around there that I couldn't straighten up in that time, even if I would go.

Q. Do you know how long a trip it was from Glenrock, Wyoming to Hobbs, New Mexico?

A. Between eight and nine hundred miles, I think.

Q. How long would it have taken you to get there?

A. I figured about two days and a half, at least.

Q. And you were given four days to get there?

A. That is right.

Trial Examiner Holden: May we fix the day of the week?

Off the record.

Witness: It is my recollection that it was on Friday.

Mr. Shaw: I am sure he is wrong. This would seem to be Thursday rather than Friday.

Witness: That is correct, it was Thursday evening, late Thursday afternoon.

Trial Examiner Holden: Proceed, please.

Q. And you were supposed to be there Monday morning?

A. Monday morning to go to work. When I told Mr. Bartels under the circumstances I couldn't take the transfer, he said, it is possible, my wife being sick, the way it was, and that country being what I had told him it was, I told him it was dusty and hot, maybe they could get me a transfer to some place in Montana. I asked him again why they should transfer me any place, there was a lot of younger men than I was there, and he still maintained that was so that I would have a job of any kind, work was scarce. I also asked Mr. Bartels if that was an advancement, going to Hobbs, New Mexico, and he said no. I asked him if he knew the working [fol. 357] conditions down there, what I would be doing, and he said roustabout, and I asked him as to the pay, and hours, and he said he didn't know.

Q. Is roustabouting a demotion or advancement from pumper?

A. Roustabout is a demotion.

Q. Do you know what the difference in the pay is?

A. I don't know the exact difference in pay, but there was quite a difference in pay.

Q. Lower pay?

A. Yes.

Q. Did he make any offer to pay your expenses at that time?

A. He said he'd pay my expenses down there, and I told him that wouldn't even be a start, that they would pay me what it would cost to move to Hobbs, New Mexico. I asked him if they would pay it back, and he said no.

Q. Did he say anything about moving your household furniture down there?

A. There was nothing said specifically about it, but I judge that the expenses down there would include that.

Q. You thought it did include that at that time, didn't you?

A. I figured it did, although I couldn't swear to it.

Q. Had your wife been ill at this time?

A. She had been under the doctor's care for better than two years.

Q. Had you been advised by a doctor that moving to a southern climate would affect her health?

A. I hadn't, but figured that asthma was what was causing it, and in the summer time it was worse, especially during a dust storm or anything like that, for a few days. In the winter time she is much better.

Q. Now, that was late in the afternoon, you say?

A. Yes.

Q. On Thursday, the 27th of April?

A. It was.

Q. Well, what did you do that evening?

A. I told Mr. Bartels, he asked me if I wouldn't sit down and talk to, if I wouldn't go down and talk it over with my [fol. 358] wife. I told him I would, but that I had three days that I was off, that I had a trap line in the mountains, and was going up there to set that trap line. The season closed the first day of May, and we had to have all traps out of there by the first day of May, and I was going up there until that date.

Q. Was the next day, that is Friday, a day off for you?

A. It wasn't my day off but I had traded a day off with Mr. DeClue, which was customary in the field at that time, and I traded him for that day to work in my place.

Q. And what did you do Saturday and Sunday?

A. Saturday and Sunday were my rightful days off.

Q. When you asked Mr. Bartels at this time why younger men were not transferred, did he give you any answer of any kind?



A. He did not.

Q. Did he tell you whether he knew or not?

A. He said he didn't know.

Q. Now, when did you come back, when did you go back to your home in Parkerton from your trap line?

A. I came back Sunday night.

Q. That would be Sunday night, April 30?

A. I believe that is correct, yes.

Q. Did you go to work on the morning of May 1st?

A. No, I went up to see Mr. Thomas. My wife and I talked it over that evening, and I told Mr. Thomas that I couldn't accept the transfer. He said alright. He asked if Ray had told me that my expenses would be paid down to Hobbs, New Mexico. I told him yes, but he didn't say anything about paying them back.

Q. When you say paying them back, what do you mean by that?

A. In case I couldn't stay there, if I tried it out.

Q. Well, then, is that all Mr. Thomas said?

A. Well, he said "That's that. We will send a telegram now that you are not coming."

Q. Did you ask Mr. Thomas whether you should go to work that morning or not?

A. No.

Q. What did you do then?

A. I went over to get into the car, and Mr. Bartels came [fol. 359] out of the office, and said "well, son, what did you decide to do about the transfer?" I said, "I just came up to tell Mr. Thomas that I didn't feel like I could take it." He said, "Well, you are going to throw your tail up over your back, and go up and cry on Shipp's shoulder, too, are you?"

Q. That was all he said?

A. He turned around and went in the office then and I got in the car and went down home.

Q. Now, the next day, about May 2, did you have a conversation with Mr. Bartels, in front of the post office?

A. Yes, sir, I did.

Q. Will you give us that conversation?

A. I had gone up to get the mail, and just got in the car when Mr. Bartels drove up.

Q. What time of the day was that?

A. I believe it was some time after 11 o'clock, I don't know, between 11 and 2, I couldn't state the exact time.

Q. And will you give that conversation please?

A. He motioned to me to roll down a window, that he wanted to speak to me, and asked me when I was going to get out of the Company house. I told him I didn't know until I got straightened up, and found out whether I was transferred or fired, or what they did, why, I would get out of the Company house. "Oh," he said, "You quit." I told him I didn't do any such thing. I said, "That's a lie, and I haven't done it, I haven't quit the Company." "Well," he said, "You didn't come to work yesterday." I told him no, I didn't got to work yesterday, I live right there on the lease, I figured that if there was anything that they had to do, they could let me know. I told him also that, considering that, I would be up to work every morning until they did fire me or something, did something to me.

Q. Did you go up to work every morning?

A. I did.

Q. Until you were told you were fired?

A. I was told that I was absolutely through with the Continental Oil Company.

Q. Did you ask Mr. Bartels at this conversation, or have any discussion with him about picking out an old man instead of a younger man to be transferred?

[fol. 360] A. I asked him about that, and he denied knowing anything about it.

Q. Do you recall the words he used?

A. No, I don't. I don't know exactly what he said.

Q. Well, did he answer your question on that, why you older men were picked?

A. I believe he answered my question.

Q. Well, what was his answer?

A. Oh; I don't remember exactly. I can't quite recall.

Q. Do you know Charlie Erwin?

A. Yes.

Q. Is he the president of your Union?

A. Yes.

Q. Did Mr. Bartels in this conversation state anything to you about Charlie Erwin?

A. He did.

Q. What did he say?

A. He asked me if I had gone down to see Charlie Erwin before I come up to see him. I told him I had. "Well," he said, "You had no business doing that, you should have come up and seen me." He asked me why I went down there. I

told him I went down for the reason of finding out who all were transferred besides myself, or anybody who was laid off during this season, and that Mr. Erwin had told me. I brought up the transfer of Dinty Moore.

Q. What was said about that?

A. I told him that "Dinty said you told him that he could ride with me to Hobbs, New Mexico," that I was going to Hobbs, and something came up about Dinty's work, and he said, "Well, we put him on a water leak out there, and it took Dinty all day to dig out this water leak," and he said he could have done the work in a half day. He said Dinty had been on the pension of the Continental Oil Company for fifteen years.

Q. Did you have any discussion with Mr. Bartels at this time about Mr. Canning, and his transfer?

A. We had discussion about Mr. Canning's transfer at that time. Mr. Bartels said that Mr. Canning told him that he wasn't a Union member at that time, and he said, "There was a few boys transferred", the Ohio Oil Company, I believe it was, laid off some men, "a while back, and there [fol. 361] wasn't any stink raised about it", he said "they were Union men", and I asked him how he knew, and he said that he just thought they were Union men, it was kind of understood.

Q. Is this about all the conversation you recall, do you know?

A. That is about all I can recall right now.

Q. Now, the next day was May 3rd. Did you go to work that morning?

A. I did.

Q. Did you see Mr. Thomas or Mr. Bartels?

A. I saw Mr. Bartels.

Q. What did he say to you?

A. I waited until time to go to work, and asked him if there was any work for me, and he said no, he said I might ask Jack Thomas, he might have something for me to do. I told him that he had always been the field foreman around there and he had always told me what to do, and what not to do, and I thought asking him was plenty, so I went home. The next day I went up there to work at the same time in the morning, and waited until the men went to work, and Mr. Thomas was standing in the door, but I didn't see Ray Bartels, so I asked Mr. Thomas if there was anything for me to do. He said no, he didn't believe there was, but I



might ask Ray. I told him that I didn't believe I had to ask one of them at a time, it looked like they were passing the buck, so I went out to get in the car, and Mr. Bartels came over to the car and we had a talk there. He asked me how far I thought I would get coming there to work every morning. I told him I would either find out whether I was fired or not. I told him, he asked me, if Mr. Thomas told me that I was absolutely through with the Continental, and I told him no, Mr. Thomas hadn't told me that, and if he would get Mr. Thomas that I would face Mr. Thomas with the facts, which he didn't do.

Q. Well, did he tell you at that time whether you were fired or not?

A. Well, he said, "Mr. Thomas told me you were through with the Continental Oil Company." I said, "Well, that is final, then. I have got some definite reason", and I finally did get the reason I asked Mr. Bartels if he told Mr. Shannon, explained to him any reason why I wouldn't take the transfer, about my wife being sick. He said no. I asked him [fol. 362] if he thought Mr. Thomas did, and he said no, he didn't believe Mr. Thomas said anything to Mr. Shannon about it.

Q. Did he say why they had not said anything to Mr. Shannon about it?

A. Well, they told him when they sent in my check that I had quit, and I told him that I hadn't. They said that was the best thing to do, to send it in that I had quit.

Q. At this particular conversation did Mr. Bartels say anything to you about taking up your case with the Union, and not taking it up yourself?

A. Yes, he mentioned about taking it up with the Union.

Q. What did he say?

A. He couldn't figure where we would get any place, and he asked me why I went up through, would go to any Union, any body else, to get any information, and I told him that the Continental Oil Company seemed to have lawyers hired for that purpose, and I figured that we had the same right to do it.

Q. The right to do what?

A. To use advice from somebody that knew more about it than we did.

Q. Did he say anything to you about standing on your own feet?

A. He told me he had always respected me because I had stood on my own feet in times before, he said up until the last two or three years, he said, I had to go and cry for help in this case. He also mentioned the fire that I had had up at Slim DeClue's lease in previous weeks.

Q. How did he bring that up?

A. And towards the end of the conversation he said, "Well," he said, "You want to remember that fire up at Slim DeClue's lease, you told two or three stories about that. If you cause any trouble we can bring that up against you," and I told him "alright."

Q. When was that fire at Slim DeClue's?

A. It was some time early that spring, I don't remember the exact date.

Q. Were you discharged over that, or disciplined?

A. I wasn't discharged.

Q. Were you disciplined?

A. I couldn't say that I was, they wanted to know what happened, and I told them I didn't know exactly what happened. [fol. 363] Mr. Thomas said, "It looks like you had set up here at the clutch, and threw a match out there and lit it." I told him no, I hadn't done that.

Q. And you were not disciplined in any manner?

A. I wasn't disciplined.

Q. Did you lose any work on it?

A. No.

Q. Lose any pay?

A. No.

Q. You weren't looking for any discharge?

A. It was never brought up but once. Ray asked me again what happened up there, how the fire started, and I told him—

Q. Ray Bartels?

A. Ray Bartels. He wanted me to tell him the truth about that fire, and I told him there was no way that I could figure, outside of spontaneous combustion, which they claimed could not possibly have happened; it was cold that day, and I was using a fire to warm the engine with, to start it up, instead of the cylinder, and I had a rag in my pocket, they used to wipe out parts of the engine, and when I was on the rig floor I smelled something burning, and found out this rag was smoldering in my pocket, but I took the rag out away from the rig, and put the fire out. And he wanted to know

why I hadn't told Jack Thomas that, and I told him Mr. Thomas had the same as accused me of setting the rig on fire, so I told him I didn't know anything about it, and I wasn't sure at that date whether that was what caused the rag to get on fire. I wasn't at the rig at the time the explosion occurred, I was at another rig, oh, about a hundred yards away, when I heard the explosion, and I wasn't positive what set it afire.

Q. I show you "Board's Exhibit 59A", purporting to be an envelope addressed in typewriting to Mr. Ernest Jones, Parkerton, Wyoming, by registered mail, and ask you whether you have seen that before?

A. Yes, sir.

Q. I show you a considerable amount of pencilled material on this envelope. In whose handwriting is that pencilled material?

A. That is mine.

(Thereupon the document above referred to was marked [fol. 364] as "Board's Exhibit 59A for identification", Witness Jones.)

Q. I show you "Board's Exhibit 59B for identification", entitled "Service Station Solicitation Report", and ask you whether this was received in the envelope which is "Board's Exhibit 59A".

A. No, I don't, I couldn't say whether it was or not.

Q. You cannot identify it?

A. No, I cannot identify that.

Mr. Shaw: I shall withdraw "Board's Exhibit 59B".

Q. What was contained in this envelope, "Board's Exhibit 59A"?

A. There was a check in there from the Continental Oil Company, for twenty six dollars, and I believe fifty cents, some cents, fifty three cents.

Q. On the back of the letter appears the stamp, "June 15, 1936", a Glenrock, Wyoming register. Is that about the date you received the letter?

A. That was the date, yes.

Mr. Akolt: What was that date?

Mr. Shaw: June 15, 1937.

Q. Did you receive any other document contained in the envelope, other than the check?



A. Just the check, was all there was in the letter.

Q. What did you do with the check?

A. I cashed it under protest. The check inside was marked "Termination check", but I yet hadn't been fired or quit the Continental Oil Company.

Q. The pencil material on the outside of "Board's Exhibit 59A", is what you wrote on the check?

A. That is correct.

Q. You stated this check was for twenty six dollars and fifty cents?

A. Twenty six dollars and fifty three cents.

Q. Was that any arrears for back wages?

A. I haven't any idea what it was.

Q. You don't know what the money was for?

A. No.

[fol. 365] Q. Had you been paid in full at the time you left the service of the company?

A. I had received my other pay check that I had coming, and I don't remember at that time, I believe it was in full, that is through the office a short while later.

Q. Did you ever receive any written document from the Continental Oil Company, or from any of the officers thereof, concerning reinstatement?

A. No, sir.

Q. Did you ever receive any written evidence or any written statement showing why you were ordered to be transferred to Hobbs, New Mexico?

A. No, sir.

Mr. Shaw: Mr. Examiner, it is now five o'clock. I am not quite through with the witness, I have finished with most of his story, and I will now go into a new phase of his testimony, he will have to come back tomorrow morning anyway.

Trial Examiner Holden: Is any disposition to be made of the identified exhibit?

Mr. Shaw: Oh, excuse me, I now offer "Board's Exhibit 59A for identification", into the record as "Board's Exhibit 59A".

I should like to ask one more question before the Examiner rules on the Exhibit.

Q. When did you write this pencil material on the outside of "Board's Exhibit 59A"?

A. I wrote part of it at the time that it was, the amount of the check on it, and the date received, oh about a week

later, whenever it was that I cashed the check. I didn't intend to cash the check, and I figured I could use the money, and then I wrote some more of it afterwards, of what I had signed on the back of the check.

Q. How long afterwards?

A. After, oh, it is possible it was two or three or four weeks afterwards, I happened to think about it, and I thought I would write the rest of what I had wrote on the check, on the back of the check, then I thought I would just write the date the check was received and the amount of it.

Mr. Akolt: Just let me ask a question.

[fol. 366] Mr. Shaw: Go ahead.

Mr. Akolt: So, what you have written on the face of this envelope was supposed to be on the check itself?

A. Very similar to that, yes.

Mr. Akolt:

Q. I just want to, I notice in your handwriting it says June 5, 1936, whereas the postmark on the envelope is June 15, 1936.

A. Well, that was, I didn't, I wrote the date that the letter, that the check was mailed there, I took it off of the back. It wasn't written the day I cashed the check, or anything like that. I didn't notice, the postmark was blurred on the front of the envelope, and I never thought about it being a registered letter, about turning it over and getting it off of that, so that is the date.

Mr. Akolt: What I am not clear on is, that you couldn't have written this on June 5th, because the envelope wasn't postmarked until June 15th.

A. Well, it was meant to be June 15th, then, it was a mistake on my part.

Mr. Akolt: I have no objection.

. . . . .

[fol. 367] (The direct examination of Witness Ernest Jones was continued by Mr. Shaw.)

Q. Mr. Jones, do you know where you stood with reference [fol. 368] to the seniority of the other men employed in the Big Muddy field, from the point of view of years of service in that field?

A. I figured, according to the time I had in, that I stood about fifth or sixth in seniority.

Q. Out of about 30 men, is that correct?

A. Right around that many, yes.

Q. You consider you had how many years' service in the field?

A. In the field, the last time that I went to the field, I figured I had from about August 1928 to the date of my supposedly transfer.

Q. Approximately eight years of service in the field?

A. About that yes. That was continuous service.

Q. Continuous service?

A. Yes.

Q. Now, from the point of view of service with the company, in any field, do you know how you compared with the other employees in the Big Muddy field?

A. I figured about the same.

Q. About the same? Was there ever a list posted at the field concerning the seniority of the various employees?

A. Not to my knowledge. The only thing I know of in that line were buttons sent out at certain times, I believe of ten year period of labor.

Q. What they call a ten year button?

A. Ten year button.

Q. Ten years of service?

A. Yes.

Q. How many men in the field had a ten year button?

A. I really don't know.

Q. Can you give us the approximate number?

A. I believe Mr. Bonderant, Charlie Erwin, and Robert Fleming, Art Jefferies. I believe there is some more, but I can't state.

Q. Approximately how many more, do you know?

A. No, I don't.

Q. Did you have a ten year button?

A. No, I didn't have a ten year button.

Q. How many more years did you have to go before you got a ten year button?

[fol. 369] A. Well, I couldn't say for sure.

Q. Well now, you started working for the Company in 1926, did you not?

A. In the spring of 1926. I figured I should have been about due for a ten year button at the time I was, left the employment of the company.



Q. That is, about the time you left the employment of the company you had a ten year button coming?

A. Right close to that, yes.

Q. Now, what do you mean by the permanent pay roll out at the field?

A. Well, at one time I had a rating there, a starting rate, and I believe an intermediate rate and a permanent pay roll rate. We started work for the Company, and worked such a length of time, and went on the intermediate pay roll, and on up to the regular pay roll, if I have it correctly.

Q. Now, what does the regular payroll mean?

A. Put on the permanent pay roll, I judge, by monthly wages.

Q. You mean the other men who were receiving a low and intermediate rate were paid hourly wages?

A. I believe that is correct, I wouldn't say for sure.

Q. Well, do you recall whether that system was in effect, when you started to work for the Continental Oil Company?

A. Not that I know of, it may have been.

Q. Well, what was your understanding, Mr. Jones, of the permanent pay roll?

A. The permanent pay roll was a permanent employee with the company, and they had taken their medical examinations, and passed those, and were due for a permanent employee's pay.

Q. And there were layoffs occurring from time to time in the field, were there not?

A. No, not that I know of, on the permanent employees.

Q. Well, were there of the other employees, other than those on the permanent pay roll?

A. There was.

Q. When there was a layoff to come, a reduction in force, what group was ordinarily laid off first, the men on the low and intermediate rate?

[fol. 370] A. They as a rule lay off the men on the low and intermediate rate.

Q. Had that been followed over a period of years?

A. I think so.

Q. Do you know anything about the policy involved in transfers, what men were transferred?

A. No, I really don't know the policy of the transfers. I never paid much attention to it until I had my transfer.

Q. Well, when you were transferred to Waldon, Colorado, you were a young man, I believe, from the point of view of service, is that correct?

A. Will you state that question again please?

Mr. Shaw: Read the question.

(The question was thereupon read by the reporter.)

A. Well, either I misunderstood your question, but the point of service, I should have been an old man with the company.

Q. Well, what do you mean by that?

A. I should have had in more service with the company than a lot of the men previously hired.

Q. I am talking about at the time you went to Waldon, Colorado.

A. Yes, I was.

Q. Well, you went there in 1926, didn't you?

A. I did.

Q. Well, you had only worked a very short time for the Continental before that, hadn't you?

A. Just a short while.

Q. Well, then, you were young in point of service, weren't you?

A. Yes. I get your question now.

Q. At the time you were transferred to Waldon, Colorado were you asked whether you wanted to go there or not?

A. I am not sure whether I was asked whether I wanted to go or not. It was, anybody that did want to go that was working were given that privilege, if they wanted to go, at that time, from the drillers.

Q. Well, were you ordered to go regardless of your own feeling in the matter?

[fol. 371] A. I was not ordered to go.

Q. Do you know what the policy of transfers is concerning consulting the man to be transferred, whether he wants to go or not?

A. No I don't.

Q. Was there any understanding among the employees, understanding of any rule or regulation to that extent?

A. Not that I know of.

Q. You don't know of any policy of the company regarding transfers?

A. I don't know of any policy that they hold. They transfer in different ways different times. The drillers on these rigs, they always said, "We are going to move" some place, and if a man wanted to go, why, he held his job with them, unless he didn't want to go. If he didn't, why, they would get somebody else, and put in his place.

Q. Well, was that the policy as far as the pumpers were concerned?

A. I don't know whether they ever asked, I don't know of any pumpers that were moved outside of the state, or any distance before, for the company.

Q. What is the type of men that usually move in the oil fields?

A. Usually on drilling, yes, are the main ones to go different places?

Q. You have never knew of pumpers before to be moved for long distances?

A. Not that I know of.

Q. Do you know whether or not the following men were employees in the Big Muddy field in 1936: J. H. O'Neal?

A. No, he wasn't employed at that time. In 1936?

Q. Yes.

A. Yes.

Q. H. Jones?

A. I believe he was.

Q. Charlie Hanson?

A. Yes, he was employed at that time.

Q. Kent Bormuth?

A. Yes.

Q. Claude Klintworth?

[fol. 372] A. I am not sure whether Claude Klintworth was on permanent pay roll at that time or not, I couldn't say.

Q. But you were sure that the four men whose names I read were working there in the field in 1936, when you terminated your services?

A. They were.

Q. Do you know whether they were on the permanent pay roll when you terminated your services in April 1936?

A. J. H. O'Neal wasn't on the permanent pay roll, I don't believe, at that time, it seems to me he was refused his vacation because he wasn't, that is in 1937, because he wasn't, hadn't put in the amount of time on the permanent pay roll.



Q. Do you know whether Jones or Hanson or Bormuth were?

A. Bormuth was on the permanent pay roll, Hanson was on the permanent pay roll. Who is the other one?

Q. Bormuth?

A. Bormuth, yes.

Q. Was Jones on the permanent pay roll at that time?

A. I believe Jones had worked for the company before, before he came up here, I couldn't say for sure. I believe he was on the permanent pay roll.

Q. Well, now, do you know when these men were put on the permanent pay roll?

A. No, I couldn't tell you that.

Q. Do you know when O'Neal was put on?

A. I believe O'Neal was put on the permanent pay roll approximately '36. I wouldn't state that positive.

Q. You don't know when Jones or Hanson or Bormuth were put on the permanent pay roll?

A. No, I don't.

Q. But you are sure they were on the permanent pay roll in 1936?

A. I am sure they were on the permanent pay roll.

Q. Now, you still live out there at Parkerton, don't you?

A. I do.

Q. Who is the relief pumper on your old job at this time, do you know?

A. I couldn't say for sure. I haven't paid any attention.

Q. Do you know who took your job soon after you left it?  
[fol. 373] A. I couldn't state that. I didn't pay any attention to that. I believe J. H. O'Neal was on the job part of the time.

A. Was J. H. O'Neal ever a member of your Union?

A. No.

Q. Do you know whether or not he had any outspoken attitude toward your Union?

A. Not that I know of.

Q. Well, was he known as a strong anti-Union man in the field or not?

A. I believe so. I think he was on a committee circulating a petition for a new Union out there.

Q. When was that?

A. The employees' Union. I believe about a year ago, I am not positive.

Trial Examiner Holden: May we try to limit the testimony to knowledge, and not including beliefs.

Mr. Shaw: Well, I am asking him entirely as to the reputation of the men among the employees, is all.

Trial Examiner Holden: But so far as the basis for the reputation is concerned?

Mr. Shaw: I don't care about the basis.

Q. Now, do you know whether any men have gone to work for the Continental Oil Company in the Big Muddy field since you terminated your services?

A. Jack Nelms.

Q. How about Ernest Keene, do you know him?

A. I know him, yes.

Q. When did he go to work out there?

A. A short while before I was laid off.

Q. A short while before?

A. Before I got my transfer.

Q. How long had Lou Jackson worked out there, do you know?

A. I don't remember, no.

Q. Do you know how long Al Collins had worked out there?

A. No, I don't exactly.

Q. D. Purcell, do you know how long he had worked there?

A. No, I don't.

[fol. 374] Q. Do you know how long Bud Morgan had worked there?

A. Not exactly, no.

Q. Do you know how long the two Peterson boys had worked there, R. P. Peterson and John Peterson?

A. No, I don't.

Q. I have made you a list of men, Ernest Keene, Lou Jackson, Al Collins, D. Purcell, Bud Morgan, R. P. Peterson, John Peterson. Were any of these men as old in seniority either in the field or with the Company, as you were?

A. I don't believe they were. I couldn't state the absolute facts on that. I would have to go back and get the Conoco payroll to prove that point. I haven't the exact information on it, but not to my knowledge.

Q. You told us of the time in 1935, in the spring of 1935, when you were discharged for a few minutes without loss of time or pay, and then re-hired. Outside of that occasion

were you ever disciplined for your work in the Big Muddy field?

A. I was disciplined at one time for running a tank over.

Q. When was that?

A. It was shortly after I went down on that lease.

Q. 1929?

A. 1929. By Mr. Jack Thomas.

Q. How was the discipline meted out to you? What did you get for doing it, in other words?

A. Well, just in words was all.

Q. You weren't laid off?

A. I wasn't laid off, no.

Q. You lost no time and no money?

A. No time and no money, and there was no oil lost.

Q. Now, outside of that occasion, and the one I have already mentioned in the spring of 1935, were you ever disciplined for your work?

A. Not that I recollect.

Q. Were you ever threatened with discharge?

A. No.

Q. Now, had you worked steadily in the field from 1929 without any lay-off due to any cause whatsoever, until 1936?

A. I had.

Q. Had there been men laid off during the depression in the field?

[fol. 375] A. Not that I remember.

Q. That is, the whole force had been maintained?

A. As near as I remember, yes.

Q. Well, when you say the whole force, do you mean the whole force of the permanent payroll?

A. I do.

Q. Were there men on the low and intermediate rates being laid off from time to time during that period?

A. I believe so.

Q. But you were never laid off during that period?

A. No.

Q. Were you ever promoted for your work out there?

A. I figured that from, being put from roustabouting or odd work to a pumper was a promotion.

Q. With an increase in pay?

A. With an increase in pay.

Q. That was in 1929, was it?

A. 1929.



Q. Were you ever especially praised for meritorious work on your part?

A. I don't know that I ever was.

Q. Your bosses never told you you were an especially good worker?

A. Oh, they never had any objection, they said my work, any time I ever asked them about it, they said my work was all right.

Q. Who said that?

A. I believe Mr. Bartels made that remark, and I think Mr. Thomas has made the remark, there was no objection against my work.

Q. Now, at the time you were ordered to be transferred, in this conversation you had with Mr. Bartels, did you ever have any discussion with him about the nature of your work, the character of your work?

A. I believe I did, yes.

Q. What was it?

A. I asked him if there was anything against my work, and he said no, my work was all right.

Q. And that was in which one of those conversations, do you recall?

[fol. 376] A. That was when he had first informed me of the transfer to Hobbs, New Mexico.

Q. It was on the afternoon of April 27, is that correct?

A. I believe it was.

Q. Now, you say you were chairman of the Workmen's Committee. As chairman of that committee what was the personnel of your committee over a period of years, that is, who made up the committee? You said you were chairman of the committee all the way through from 1934 until the present time. Now, since that time, who had been the other members of your committee with you?

A. The first ones elected on the committee were myself, Dinty Moore and John Sturgeon.

Q. That was in the spring of 1932?

A. That was in the spring of 1934.

Q. The spring of 1934, excuse me. Has Dinty Moore remained one of the members of the Workmen's Committee right down to the present time?

A. No. Dinty Moore resigned, and I believe A. K. Shafer, or it was Sturgeon resigned, and A. K. Shafer took his place.

Q. But Moore remained on the committee?

A. Moore remained on the committee.

Q. All the time you have been on the Workmen's Committee as a member has Dinty Moore also been on the Committee?

A. No, he was off for a short while. He was off the Committee at the time either Sturgeon was off it or Shafer, he took, one or the other of those fellows, took his place, I don't remember which.

Q. Well, was he off for long?

A. Not very long.

Q. Just for a short time?

A. A short time.

Q. With the exception of that short time, and that was in 1934, wasn't it?

A. Yes.

Q. He has been on the Committee steadily?

A. He has.

Q. He was on the Committee on April 27, is that right?

A. Yes, sir.

Q. Mr. Shipp testified that on February 6 he and your [fol. 377] Committee met in the Gladstone Hotel with Mr. Bartels and Mr. Thomas, is that correct?

A. That is correct.

Q. February 6, 1936?

A. Yes, sir.

Q. You were present at that meeting?

A. Yes, sir.

Q. You heard Mr. Shipp's testimony concerning that meeting?

A. I did.

Q. Is that substantially correct?

A. Yes it is.

Q. Were you and Jones and Simon the three members of the Committee present?

A. I and Jones? It was Moore and myself.

Q. I mean Moore and you?

A. And Everett Simon.

Q. How long had Everett Simon been on the committee?

A. I don't know the exact date. I believe about a year.

Q. Mr. Shipp testified that your Union at one time had about a hundred members, and that was in the fall of 1934, I believe. Is that correct?

A. That was the fall and spring, the fall of '33 and the spring of '34, that we had over a hundred members.

Q. Now, what is the present membership of your Union?

A. About ten.

Q. That is members in good standing?

A. Members in good standing.

Q. And about how many of them from the field, and how many from the refinery?

A. Three from the field and, the rest of them from the refinery. Seven from the refinery.

Q. Does that include yourself?

A. That includes myself.

Q. Does that include Dinty Moore?

A. No, it doesn't include Dinty. It makes four from out there, if you include him.

Q. I show you "Board's Exhibit 29" which has been testified to by Mr. Shipp was a petition passed in the field in the [fol. 378] summer of 1935. Your name appears there, Ernest Jones, I believe.

A. That is right.

Q. Where was that petition signed, and what method was used to circulate it, do you know?

A. That petition was circulated by a committee appointed to do so.

Q. Were you a member of the committee?

A. I couldn't say whether I was or not.

Q. Well, did you circulate the petition?

A. I believe that I did.

Q. Well, where was it circulated?

A. In the field.

Q. Did you solicit anybody to sign the petition, if you can recall?

A. No, I can't recall.

Q. That is your signature, is it?

A. That is my signature, yes.

Q. You want to go back to work at your job in the Big Muddy field?

A. I'd like to go back to work, yes.

Q. You have had other work since you terminated your service with the Respondent Company?

A. No other outside work, no, except the running of the store there, and the Postmaster. My wife takes charge of that, outside of my name being on the, signed as Postmaster.

Q. You mean she takes care of the clerical work in the postoffice?

A. She takes care of all of it.



Q. And you run the store?

A. I run the store.

Q. Are you able at this time to give us an approximation of your earnings from the time your services terminated until the present time?

A. I couldn't give you an exact account of it.

Q. Could you give us an approximate account of it?

A. I can give you some of the figures on this last year's bookkeeping, I would have to go back and get some of the others.

Q. Well, can you make a computation of that?

[fols. 379-382] A. I can, yes.

Q. And appear later in this proceeding for that one purpose, the computing of that?

A. I can.

Mr. Shaw: I think that is all.

Trial Examiner Holden: Off the record.

(Discussion off the record.)

Trial Examiner Holden: On the record.

Mr. Shaw: May I ask a few more direct questions?

Q. What was your rate of pay at the time your service terminated?

A. I think it was \$117.50 per month.

Q. Do you know whether men in your position are receiving \$117.50 at this time, or not?

A. I do, they are not receiving \$117.50, they are getting, I believe, \$140.00, approximately.

Q. \$140.00 a month?

A. Not counting the bonus phase.

Q. When did that payment of \$140.00 a month go into effect, do you know?

A. The first of the month in April 1936, or that month, I couldn't state for sure which. It went into effect when the 48 hours went into effect.

Q. Well, did it go all the way to \$140.00, or has there been progressive increases up to that?

A. I believe it went to \$130.00 first.

A. And then there has been another increase since then?

A. Then there has been another increase.

Q. Do you know the date of the other increase?

A. No, I don't.

Mr. Shaw: I think that is all.

## Cross-examination:

[fol. 383] Q. Your work in the Big Muddy field started in 1929, didn't it?

A. Starting in 1929?

Q. Started in 1929 in the Big Muddy field?

A. Started in 1928, I believe.

Q. In the fall of 1928?

A. The last time that I started there in continuous service in that field, I believe, was in August, 1928.

Q. Now, in addition to the few incidents that you volunteered on questioning by Mr. Shaw, as to criticism of your [fol. 384] work in Bug Muddy from time to time, aren't there some other instances that you didn't mention?

A. There may have been. Not that I know of, of any criticism.

Q. Do you recall one time when you were moved from one job to another because you couldn't get along with the man immediately in charge of it?

Mr. Shaw: And the date of that?

Mr. Akolt: I understood it was a number of years ago. I am not quite sure of the date myself.

Q. Do you recall the incident?

A. I don't recall, no. It was never stated to me that that was the reason that I was changed, that I know of.

Q. But you were changed from time to time?

A. I was changed, yes.

Q. Now, you stated that since 1929, or since some particular time, you hadn't lost any time on the work?

A. I hadn't been fired or laid off or anything like that. I have lost time in accidents.

Q. You have had quite a bit of time off over a period of years, on account of accident and sickness, haven't you?

A. I have.

Q. For which you have received compensation under the compensation laws?

A. Under the compensation laws of the State, yes.

Q. Which in the State of Wyoming is, compensation is paid by the Company through the State compensation fund?

A. Through the State compensation fund, yes.

Q. Now, in addition to the compensation that you got through the fund, you also got paid your salary when you

were off at various times, did you not, on account of accident and illness?

A. When I was off on the accident at Walden, Colorado, I received the pay checks for two weeks, and my compensation was turned over to the Company.

Q. Now, back in 1925, did you have a fractured elbow?

A. I did.

Q. Were you off 44 days?

A. I was.

[fol. 385] Q. Do you recall you got paid \$108.35 from the compensation fund, plus \$209.00 salary, during that period?

A. I don't remember what I was paid. I remember that I was paid though, at that time, during the accident.

Q. Do you recall in the year 1927 that you were off 108 days on account of an injury?

A. What date was that, please?

Q. 1927.

A. Yes, that was the accident at Walden, Colorado.

Q. You were paid some three hundred dollars from the compensation fund, and \$675.00 salary?

A. The compensation fund was turned over to the Company, and I was paid straight time. Now, what they did with it—

Q. And in addition to that you were furnished doctor and hospital services?

A. I was.

Q. But you were off 108 days, weren't you?

A. I was.

Q. In 1928 you were off 51 days with a knee, crippled knee?

A. That is right, it was from the same injury.

Q. And you were paid on the same basis?

A. That is right.

Q. Again in the fall of 1928, another injury, and you were off 4 days, September 18?

A. I don't remember that accident.

Q. 1932, do you remember, starting July, fractured arm, you were off 44 days?

A. I was. I don't remember the exact date of time.

Q. Then again in December of 1932 you were off 8 days with illness?

A. I believe so.

Q. Then in 1933, in January, 3 days, with a tooth extraction?



A. That is right.

Q. And in May of 1933, off 23 days?

A. I believe that is correct.

Q. And in January of 1935, off 8 days.

[fol. 386] A. I don't remember exactly.

Q. You remember you had bronchitis, or some such thing, at that time?

A. I guess so.

Q. You mentioned something about a ten-year service button?

A. I did.

Q. When service buttons were given, or are given, that was for ten years continuous service without lost time as a result of accidents, wasn't it?

A. I don't have the least idea what they were given for.

Q. It wasn't for just ten years employment?

A. I couldn't say whether, what they were given for.

Q. You are familiar with the fact, are you not, that it is a different Company since 1929, through merger, a different Company, that operates this Big Muddy field, and the refinery?

A. I am well aware of the fact.

Q. And up until 1929 the operating company was the Continental Oil Company, a Maine corporation?

A. Yes.

Q. And in the year 1929 that company merged with the Marland Oil Company, a Delaware corporation?

A. Yes, sir.

Q. And then after that merger the name of Marland Oil Company was changed to Continental Oil Company?

A. That is right.

Q. Now, Mr. Shaw asked you certain questions with reference to four men in employ in the Big Muddy field at the time you terminated your services. One was K. W. Bor-muth. What was it you said about him?

A. I don't remember exactly what the question was.

Q. I don't recall, either, but how long had he worked in the Big Muddy field?

A. He wasn't working at the Big Muddy field the last time I came back from Walden, Colorado, in 1929.

Q. He wasn't moved, was he?

A. He wasn't moved, no.

Mr. Akolt: Mr. Shaw, to save time here, what was the gist of your questions concerning these four men, the purpose of them?

[fol. 387] Mr. Shaw: May *be* go off the record?

Trial Examiner Holden: Off the record.

(Discussion off the record.)

Trial Examiner Holden: On the record.

Q. Mr. Jones, you were asked in answer to a number of questions concerning the permanent payroll. In what sense or meaning did you use that word?

A. The permanent payroll?

Q. Permanent payroll.

By the length of time that the men had been working for the Company, or what?

A. No, it would be by the length of time, in a way, that a man, a man usually hired wasn't put on the permanent payroll immediately after he was hired, or right at the time he was hired.

Q. He wasn't hired just for extra work, you are not making that distinction, about a man just being hired for a few days or a month's job?

A. No.

Q. But he was hired permanently, but you didn't call him a permanent employee until he had been working for a certain period of time, is that it?

A. I believe that is the way the Continental rates them.

Q. But you are not sure what you mean by permanent payroll?

A. The permanent payroll is a man that is a regular employee of the Continental Oil Company, is the way I understand it.

Q. And how long is your understanding that he had been on the payroll before he was considered a regular employee?

A. I am not sure as to that. I mentioned a while ago the starting in of employees working a certain length of time, going on an intermediate rate, and on up until they were up on the permanent payroll.

Q. Is this what you had in mind, that formerly the Continental had three rates of pay, and when you first went to work for a certain number of days or a month you would get

one rate, and then for the next few months you would get an [fol. 388] intermediate rate, and then you would get what is called an ultimate rate, or—

A. Something like that, yes.

Q. And that later on the intermediate rate was abolished, and after the first six months or some other period the employee would get one rate of wage, then he would go on the ultimate wage?

A. Yes.

Q. And that is what you meant by permanent payroll, that he had finally worked long enough to be on the permanent wage rate?

A. That is right.

Q. Now, you mentioned Mr. Bormuth, Mr. Hansen, and Mr. H. L. Jones, and Mr. O'Neal, and stated these were all on the permanent payroll, as you understood.

A. I think that they were.

Q. As a matter of fact there weren't any employees in the Big Muddy field at the time you terminated your services except those who were on such a permanent payroll?

A. Well, there was two employees there that I mentioned, J. H. O'Neal and Jack Nelms.

Q. Jack who?

A. Jack Nelms.

Q. What about him?

A. That if they were on the permanent payroll they hadn't been there very long.

Q. Then you are not sure of this?

A. No.

Q. Mr. Jones, you are how old?

A. 37 years old.

Q. And you are married?

A. I am.

Q. You have no children?

A. I have no children.

Q. A good number of the men working in the Big Muddy field are married and have children?

A. A good many of them, yes. Not all of them.

Q. It is more difficult for a man, with a family with children, to move, say, from the Big Muddy field to New Mexico, than it would be for a man with only a wife?

[fol. 389] A. I expect it is; there were some there that weren't married at all, and some just had a wife.



Q. Well, I notice that R. R. Arnold was single, and he had been there for 13 years in 1936.

A. That is right.

Q. Should he have been moved?

A. Not necessarily, no.

Q. What I am trying to arrive at finally with you, is as to whether or not there is any other element or elements considered by the management in either discharges or transfers except the particular length of service. Don't you admit that there are other elements to be considered?

A. There might be, yes.

Q. And what are some of the other elements that you can think of that ought to be considered by the employer?

A. There was a time with the Continental Oil Company, that all single men were laid off in preference to married men regardless; a time that I remember of, in the Salt Creek field, when I was working out there, that I was laid off out there when the rig shut down, and the single men were picked. Outside of that I haven't much to say about it.

Q. When a reduction in force is necessary such as occurred in Big Muddy field for the reason as stated here, it becomes then a question of discharging some employees, or of attempting to find work for them some place else in the organization, doesn't it?

A. That is right.

Q. Now, the Continental Oil Company, due to this reduction of force in the Big Muddy, didn't go out and fire anyone, did it?

A. I believe at that time it was claimed that I quit, which I did not.

Q. Well, leaving aside your particular instance, and your construction of it, you were offered a transfer to Hobbs, weren't you?

A. I was told that I had a transfer to Hobbs. I wasn't offered a transfer to Hobbs.

Q. Well, you were given a transfer to Hobbs, which you didn't accept?

A. Which I didn't accept.

[fol. 390] Q. The Big Muddy field had been going down as an oil producer for a number of years, hadn't it?

A. I expect it had.

Q. You knew it had, didn't you?

A. I didn't have any special—

**Trial Examiner Holden:** The Examiner will ask whether or not this matter is relevant.

**Mr. Akolt:** Well, if you are asking me I will say yes, because I am asking the questions. I mean I think it is necessary to have the whole truth.

**Mr. Shaw:** I have raised no objections.

**Trial Examiner Holden:** It is true, but presumably counsel for the Board will have to cover the matter, and as far as the Examiner is concerned we are not getting the facts.

**Q.** Did you file a charge or complaint with the Union to the effect that the transfer of you to Hobbs, New Mexico, was based on your Union affiliation?

**A.** I believe that charge was filed by Mr. Shipp originally through the Oil Workers Central Council.

**Q.** Did you make the complaint to Mr. Shipp on which the charge was filed?

**A.** I expect I did, yes.

**Q.** Well, all right, now, I wish you would state the facts on which you based your complaint that your transfer order was based upon or related to your Union affiliation.

**A.** I based it upon remarks that had been made by Mr. Bartels to me about the Union, and my work had seemed to be satisfactory. If you would ask them about it they would say it was satisfactory. They wouldn't tell me who picked the men for transfer, or why they were picked, any more than that work was shutting down in the Big Muddy field, and they had to have somebody in Hobbs, New Mexico; to give us work they were transferring us to Hobbs, New Mexico, but yet there were men there that had only been there a short while.

**Q.** Now, without trying to keep within what I stated a while ago, the men that had only been there a short while, that you thought should have been transferred rather than you, were they Union or non-Union men? Now, if that is embarrassing on the part of your membership, because of [fol. 391] the possibility of disclosing Union membership, I will not insist on the answer.

**A.** I have never picked any particular man that I thought should be transferred from there. I thought I should be given a longer chance than four days to accept the transfer when my wife was in the condition she was, into that territory.

**Q.** Did you ever ask for a longer period than the 4 days to arrive at Hobbs?

A. It was asked for, I believe, by the representative over there.

Q. What did he ask for?

A. I wasn't at the meeting.

Q. You mean he asked for an extension of time, and you indicated that if you had an extension of time that you would go, that you couldn't get there in 4 days?

A. I didn't make any specific statement to that effect, I don't believe.

Q. Did you ever indicate to Mr. Bartels, Mr. Shannon, or anyone in the Continental Oil Company organization, that if the 4-day period was extended you would go?

A. The only statement of any kind like that I made, was to ask them if they would pay my expenses back if I did go down and try it and couldn't stay there, because there was nothing said about expenses being paid back.

Q. Your wife was willing to go down to Hobbs, was she not?

A. She was not. She said if I said so we would go, but she was afraid of her health.

Q. Was it your or your wife's remark with reference to getting paid to come back if you weren't satisfied down there?

A. That was mine. My wife might have brought it up, too.

Q. Didn't you know that while the Big Muddy field was going down, that the Hobbs field was a new field, and was very active?

A. I never paid any attention to the Hobbs oil field. I heard reports of it, nothing to amount to anything. I didn't know the conditions down there. I asked Ray the conditions down there, and he said he didn't know. I asked him the conditions for living quarters, and he didn't know that.

[fol. 392] Q. Well, you knew, did you not, that your own International Union had a Local in that field?

A. I did not, didn't know anything about it.

Q. Well, if I understand your thoughts correctly, you thought that the Continental should have transferred someone who had worked in the Big Muddy field for a shorter period of time than you had?

A. I think so, yes, if somebody had to go down there. There were fellows there that were willing to go, I understand.



Q. And because you were the one ordered transferred along with Moore, you felt that that order must be based upon some Union matter, did you?

A. I figured it was, yes.

Q. Now, there have been a number of shutdowns or reductions of force from the time this Union was organized, prior to April 1936, have there not?

A. I am not in position to state what went on in there all that time. I am very poor at remembering dates.

Q. But you know that there weren't as many men working there?

A. There wasn't as many men working.

Q. In April 1936, as there were a year or two before that?

A. That is right. There was a lot of drilling operations going on prior to different dates there.

Q. And you were very active in Union affairs right from the time of the organization in the fall of 1933?

A. I was at the beginning of the first part of the year 1934.

Q. And still, during all that time, the Continental made no attempt to discharge you?

A. Not that I know of.

Q. Outside of the minute discharge you got from Mr. Bartels that you testified about?

A. That is right.

Q. At the time of the fire incident in connection with the rig, that you stated on the stand you got into trouble about because of telling different stories to Mr. Bartels and Mr. Thomas.

A. I said that Ray Bartels said that I told three different stories regarding it.

[fol. 393] Q. But there was a fire in connection with the rig?

A. There was a fire.

Q. And a fire around an oil well is one dangerous thing, is it not?

A. Very dangerous. They have had the rig burned up since then.

Q. And you were the only one around the rig at the time?

A. I was the only one around the rig.

Q. And there was no discharge of you by the Continental at that time?

A. No.

Q. And you were openly active in Union affairs at that time?

A. I was.

Q. And the other two incidents that you mentioned, the run in with Mr. Bartels and Mr. Thomas, they offered opportunities for your superiors to discharge you if they wanted to, if they were looking for a reason, did they not?

A. I expect they did, if they had been willing to fire me.

Q. But they didn't?

A. They didn't.

Q. Had you been negotiating for the purchase of this general store, or is it a general store, that you run in Parkerton, Wyoming?

A. Yes, and groceries and meat.

Q. Before your services were terminated with the company?

A. No, I didn't.

Q. I notice you stated you purchased this on May 15, I think, 1936?

A. May 15, I believe so, when I took charge of the store. I bought it the day before.

Q. You stated there was some condition of health of your wife at that time?

A. I did.

Q. What was it, eczema?

A. It is eczema.

Q. Was she being treated by a doctor?

A. She was being treated by a doctor.

[fol. 394] Q. What kind of treatment?

A. I am sure I couldn't say. She was taking treatments, hypodermic treatments. She took them from Dr. Tabor, at Glenrock, before that, and went to a doctor in Cheyenne off and on during the period when she had the eczema, and used several different ointments and salves.

Q. Well, let's not go into any great detail on that. I just wanted to find out if she had to have a special doctor.

A. She had a special doctor.

Q. She was not confined to her home or to bed?

A. She wasn't confined to her home or in bed, and hadn't been for about three or four months. As I said before, she got much better in the winter time than she did in the summer or during the hot weather, during the heat and dust, that is when she was the worst, and at times she was in bed for three or four weeks.

Q. And ever since you bought the store she has worked in the store, the post office, along with you?

A. At times, yes.

Q. She is there all day long?

A. Not all day.

Q. Well, most of the time?

A. Most of the time.

Q. The store is kept open in the evening?

A. Not later than six o'clock.

Q. Before you were appointed as postmaster who was the postmaster?

A. My mother was postmaster at that time.

Q. Did your wife work in the store before?

A. No, sir.

Q. Did both of you work there continuously or practically continuously since you bought the store?

A. We have.

Q. Mr. Erwin was active in Union affairs, was he not?

A. He is president of our Local.

Q. And has been president since the beginning?

A. No.

Q. Well, he has been active in it, though.

[fol. 395] A. He has been active in the Local since about the same time I went into it.

Q. And Mr. Erwin took an active part in testifying against the company in the hearing before the Petroleum Labor Policy Board, do you recall that?

A. I believe so.

Q. And the company has not discharged Mr. Erwin?

A. No.

Q. Can you state any instances during your connection with the Union, I believe you said your local members include both the Big Muddy field and the refinery, in which there has been a discharge of any sort of action against the Union members by the Continental Oil Company which would relate to that member's Union activity.

A. I couldn't say for sure.

Q. Well, now, you apparently, Mr. Jones, had the feeling that your particular transfer order was based upon your Union connection?

A. I believe so.

Q. You always had that feeling, apparently.

A. I have. I have had that feeling since that day, yes.



Q. That is what I am trying to get at, what is the cause of that feeling? There had never been any attempt to discipline or discharge you when you were claimed to be, at least claimed to be guilty of a violation of any rule, or the cause of any accident, or anything like that, had there?

A. Not that I know of.

Q. You were on the working committee for some considerable time?

A. I was.

Q. You met with Mr. Shannon at various times, didn't you?

A. I did.

Q. Did you ever meet with Mr. Miller?

A. No, I never met with Mr. Miller.

Q. You never attended any refinery meetings then with any of the refinery meetings?

A. No.

Q. You met from time to time with Mr. Thomas and Mr. Bartels in your committee?

[fol. 396] A. I did.

Q. You never had any trouble in arranging or having meetings held, did you, when requested?

A. They never failed to meet with us that I know of.

Q. Now there hadn't been any meeting or anything taken up with the company by your committee since your February 6 meeting at the Gladstone Hotel, had there?

A. No.

Q. There had been no request for any meeting?

A. I couldn't say as to that. I have made no request, I know.

Q. So there was nothing particular pending at that time between the company and your committee that you know of which would warrant the Continental Oil Company in getting you away from the picture, was there?

A. It was rumored about going on 48 hours a week at that time, just a rumor, we weren't notified or anything like that.

Q. Well—

Mr. Shaw: Had the witness finished his answer?

A. (continuing) and I figured that just as soon as that went into effect that we would certainly make an effort to stop it if we got the actual facts that we were going on 48 hours a week.

Q. Well, now, I don't suppose this will be embarrassing, because you have told your Union membership at the present time, but what was your Union membership at that time in the Big Muddy field?

A. Well, I will have to stop and think a little bit. I am sure of eight members, and there may be another one or two, but I can't recall. That is in good standing.

Q. So that was 8 out of about 30, 8 out of about 26, if I remember the number at that time.

A. That would be more like it.

Q. I believe that is what showed at that time?

A. Yes.

Q. Now, the putting into effect of the 48 hour week, with your Union having only eight members in the field at that time, couldn't affect the Union more than non-Union men, could it?

A. I don't imagine it would have, no.

[fol. 397] Q. In other words, that would be equally applicable to all employees there?

A. But the non-Union men had given us permission to bargain collectively against that, verbally, against that 48 hour week.

Q. And when the Union men withdrew from the Union down to the point where you only had 8, did you still consider that after they had withdrawn from your Local that you were still representing them?

A. We still figured that Local 242 was by rights the bargaining agency for the employees at the field.

Q. Even though they had withdrawn from the Union after they signed this document?

A. That is correct.

Q. And did you feel that they were still the bargaining agency after a majority of the employees in the summer of 1937 signed up to form another organization, and signed up for them to represent them?

A. I figured that they still were.

Q. You figured that the Union still was?

A. I figured that Local 242 was still the bargaining agency both at the field and the refinery.

Q. Notwithstanding a majority of the employees had since formed, joined another organization?

A. Well, there is quite a bit of different phases of that to go into. If you wish me to explain it I will.

Q. Well, you will probably have your opportunity. I am getting off the particular subject now of your case, but what I am getting at, intending to get at is how you figured in your own mind that *that* your transfer order, even when connected with the rumor of the 48 hour per week work, indicated any Union feeling or anti-Union feeling because of your particular transfer.

A. I was secretary and treasurer of the Local, on the Workmen's Committee, and other activities of the Local. Mr. Moore was the same. Two of us out of these positions, I figured that the officials of the field didn't figure they would have any trouble over 48 hours or anything else if the two of us were out of the field.

Q. When you and Mr. Shipp wrote the Continental on August 12, 1935, and said that your Union represented a [fol. 398] majority, a substantial majority of the employees of the Big Muddy field, you didn't tell the Continental that that substantial majority was not made up entirely of Union men, did you?

A. No, I don't believe so.

Q. So there was nothing to indicate to the Continental Oil Company until this hearing came up that the substantial majority that you wrote about on August 12, 1935; constituted not all Union men, was there?

A. We didn't say they were all Union men.

Q. No. It was your policy and continued practice down to today not to disclose who the Union members were, isn't that right?

A. It is our policy not to disclose who the Union members are.

Q. But there was nothing as far as the Continental was concerned at that time to indicate to the Continental that your substantial majority that you wrote about, or claimed to have, were not all Union men?

A. We didn't claim as a bargaining agency to be bargaining for men that belonged to our organization, but for the men that signed that petition.

Q. Well, that doesn't hardly answer my question, but we will let it go at that. The 48 hour week had been put into force in Salt Creek, hadn't it, before that?

A. Before it was put into effect in Big Muddy.

Q. And the same was true in Lance Creek?

A. Before it was put into effect in Salt Creek, I believe.



Q. And you heard a rumor that it was going to be put into force in Big Muddy?

A. We did.

Q. And you felt that in your own mind, that your continued presence in Big Muddy was necessary in behalf of the Union, in connection with the rumor you heard about the 48 hour week?

A. Not exactly the rumor we had about the 48 hour week, but for other matters of the Union activity.

Q. There were five members of the Workmen's Committee?

A. There were three members from the Workmen's Committee in the field, that is elected members from the organization.

[fol. 399] Q. And those members were elected for, six months or a year?

A. They were elected for six months or a year, or else automatically put back in the same office.

Q. That is they were reappointed from time to time if new ones weren't elected?

A. Reappointed from time to time.

Q. Well, I was just thinking there were five names on some of these, but I guess not, just three. Well, I think probably I understand your feeling now, that is, that there was Union discrimination because of the fact that you were a member of the committee?

A. I do.

Q. Well, was your original refusal to accept the transfer which was tendered to you based upon the ground that you didn't want to go to Hobbs, New Mexico, or upon the ground that you felt there was Union discrimination?

A. Not altogether either one. I still had my wife to consider.

Q. There were three grounds?

A. There must have been.

Q. Were there any other interests besides those three grounds you have mentioned that would hold you here in Wyoming, this particular part of Wyoming?

A. Not necessarily, any more than I had a few business transactions around the town of Glenrock, and all my friends and acquaintances live here.

Q. There were some transfers made by Continental to the Lance Creek field, weren't there?

A. There was.

Q. Now, if you had been transferred to Lance Creek field, there was no Union over there, at all, was there?

A. There wasn't that I know of.

Q. So there was no attempt on the part of the Continental to transfer you to a field where your Union was not present?

A. No. If I had gone over there I would have attempted to organize one.

Q. You mentioned yesterday something about trapping. Are you in the trapping-business too?

A. I trapped some off and on on days that I had off.

[fol. 400] Q. And before your services were terminated, did you have something to do with the delivery of mail, also?

A. Not just before the time that my services terminated, I didn't. I had been hauling mail for, oh, two years, I think, before my services were terminated with the Continental.

Q. There was some criticism, was there not, when you were hauling mail, on account of interference with your other work? That is,—

A. I quit hauling mail then.

Q. Wasn't there some criticism from your superiors from time to time that you were not giving full time to your work, as you should have?

A. I don't remember of any criticism of that kind, not outside of rumors that I had heard, and I don't remember where I heard those, that I should not be hauling mail, and I quit hauling it.

Q. Well, even subsequent to that time wasn't there some question as to whether you were properly active on the job during working hours?

A. I believe Mr. Bartels made a remark at one time, he asked me what time I went to work in the morning, and I said 6 o'clock, and quit at 12, and he said, "How do I know you go to work at 6 o'clock" and I said if he was superintendent out there and wanted to know whether anybody was fooling him or not he would find out that I was going to work at 6 o'clock, and quitting at 12, outside of a little overtime which I put in once in a while, which I didn't mention.

Q. Well, the question did come up then, apparently, didn't it?

A. Yes.

Q. Not only once, but a number of times?

A. I don't remember a number of times, no. I could refer back to where we were working 24 hours a day, that is on what they call a 24 hour pumping job, when a man was sup-

posed to keep his lease in condition and keep the wells running 24 hours a day, if you are referring back to that.

Q. On this "Exhibit 29", which is the July authorization—

A. Yes.

Q. Have any other men to your knowledge, who signed that, asked that their names be taken off, since that time?

A. Not to my knowledge, no.

[fol. 401] Q. Have any of the men who signed that told you that they have since authorized another organization to represent them?

A. I will have to look at the names just a second.

Mr. Shaw: "Exhibit 29", Mr. Jones. Here it is.

A. There is one name, the third one down, that signed up for a transfer of his Union card to Salt Creek.

Trial Examiner Holden: May the record show what that name is, please?

Witness: L. D. Canning. There is R. P. Peterson, I believe, has never notified me that he wanted his name taken off from here, but he was one of the circulators of a petition at the field for another organization, but he never notified me that he wanted his name taken off of this.

Q. Well, knowing what you have just stated, do you consider that the Union is still representing Mr. R. P. Peterson?

A. I don't know, a man that will sign one petition and then turn around and sign another one, and turn around and join the Union and then turn around and distribute a petition, I don't know whether he would ask his name being taken off or not.

Q. You don't know what his attitude would be now?

A. I don't know. If we would go out and talk to this man now he probably would say he would like for us to bargain for him. I am sure I couldn't say.

Q. And who else is there?

A. H. L. Jones, I believe, is in the same position that R. P. Peterson is, although he has never asked or never had asked that his name be taken off the petition, I also think he was the instigator of a new Union or Local representative of some kind, I don't know just what it is. D. K. Coleman was working on, I don't believe as a regular employee of the Continental, but he was working on contract



work or something, sublet by the Continental, I don't just understand it, his name is on this petition, but he has never said to take it out.

Q. Well, what situation do you understand about Mr. Coleman?

A. Mr. Coleman, he is not working for the company now.

Q. He is not with the company?

A. No.

[fol. 402] Q. Was Mr. Coleman working at that time?

A. I expect he was, as near as I know. I couldn't swear to it. There is a Bernard McHale here, that I don't recognize at all, that might have been working on some sub-contract or something like that. And Jack Hajny is in the Salt Creek field, and isn't here at this present time. And the rest of them, none of them that I know of told us to take their names off the petition.

Q. Well, how many men that are on that list, even though they haven't told you to take their names off, do you know have joined, have since that time joined the independent organization?

A. There is only two men that I know of, and I don't know that they joined, they started a petition, that is H. L. Jones and R. P. Peterson. I have never seen their petition, don't know what names they have on it, what joiners they have. I couldn't answer any of your other questions.

Q. After these few days that you say you reported for work, starting, I believe you said, with May 1, 1936,—

A. Yes.

Q. Did you ever since that time apply for a job in the Continental?

A. I was told that I was absolutely through with the Continental at that last—

Q. That doesn't answer my question.

A. No.

Q. You never have since that time?

A. Never have.

Q. You identified an envelope which had been marked as "Board's Exhibit 59A". What is the particular point you desire to make with reference to that envelope, the check there was in it?

A. It had a check in it for \$26, and I believe 53c, marked across the face of it was "Termination Check". That meant that my time was terminated with the Continental Oil Company, in other words.

Q. So the purpose, then, is to show that you got a check that was marked "Termination Check".

A. Termination check, yes, sir.

Q. Well, now, you had not actually worked for the period during the period that was covered by that check, had you? [fol. 403] A. Not that I know of.

Q. You know that it is the policy of the company to give a week's notice before there is any discharge, do you not?

A. To give a week's notice?

Q. Yes.

A. I didn't know they had a policy of that kind. They are real generous.

Q. Well, you know you didn't work during that period, for which that \$26 and some odd cents was paid to you, don't you?

A. I know that I didn't work, yes.

Q. Well, do you or do you not know that when you refused to accept your transfer to Hobbs, that that was treated as a week's notice, and that you were on the basis of a discharged employee for that following week, until May 7th?

A. I figured that was what it was for.

Q. And that was treated as a week's resignation notice proposition by the company, and you got that pay on that basis, is that correct?

A. That is correct, I guess.

Q. Now, it has been pointed out to me that I may have misstated the policy of the company about giving notice in case of discharge. It is where there is a reduction of force, and layoffs are necessary for that reason, in the reduction of work, that they always give at least a week's notice, and inasmuch as this transfer was caused by a reduction in force, it was treated on the same basis as if you were discharged on account of reduction of force. You generally understood that, didn't you?

A. I didn't understand it until just now.

Q. But you understood you got the money for a period you didn't actually work?

A. I understood I had gotten \$26.53 for something, and I could use the money, so I spent it.

Q. How long after April 27, or May 1, was it before you moved out of the company house that you lived in when you were an employee?

A. I would like to change that to tar paper shack. It wasn't a house.

Q. Well, I am not particular what you call it.

A. It was little over a week, I believe. I couldn't state the exact date it was we moved out of there.

[fol. 404] Q. And where have you lived since that time?

A. Where have I lived since that time?

Q. Yes.

A. I have lived in the same building with the store.

Mr. Akolt: In view of my announced policy, my cross-examination is considerably short, and I think I am through.

Mr. Shaw: May I state that I hope that the records can be brought here by 2 o'clock. I can go ahead now and put on another witness.

Mr. Akolt: No, in view of my announced policy, I think it will be unnecessary to bring the records, particularly in view of the ruling that there will be no questions. In view of that ruling, and perhaps independent of the ruling, in order to save any embarrassment, I will not ask Mr. Jones on that matter.

Mr. Shaw: Well, the Examiner made his ruling on this matter, I take it, before Mr. Frisby made his statement.

Trial Examiner Holden: The record so shows.

Mr. Shaw: The Union is willing to bring in these records to have them used for any purpose the counsel desires. I do not wish to have the record show that counsel has been in any manner limited, or that his request for production of these records for any purpose has been limited. The Union is willing to bring them in, will bring them in, and my only objection personally was that I didn't wish the hearing to be held up while they were being produced.

Trial Examiner Holden: So far as the record shows, the Examiner is of the opinion that the representative for the Union has offered the books, and counsel for the Respondent has stated in effect that under all the circumstances, and to avoid embarrassment, they would not be required. Is that correct or is that incorrect?

Mr. Akolt: That is correct.

Mr. Shaw: And I take it then that the records need not be produced?

Mr. Akolt: That is correct.

Trial Examiner Holden: Off the record.

(Discussion off the record.)



[fol. 405] Trial Examiner Holden: On the record. Shall we go forward with the redirect examination, if there is any redirect at this time?

Redirect examination.

By Mr. Shaw:

Q. Mr. Jones, I believe you said you were on the Workmen's Committee from February, 1934?

A. That is right.

Q. From February, 1934, until May 1, 1936, was there any fundamental change in the wage or hour policy of the Continental at Big Muddy?

A. State the basis of that again, please.

(The question was thereupon read by the reporter.)

Mr. Shaw: I will withdraw the question. It will save time.

Witness: I can't quite——

Mr. Shaw: I will withdraw the question.

Q. When did you go for the first time on a 36 hour week in the Big Muddy field?

A. It was in 1933, during the 36 hour week program.

Q. Was that the fall of 1933?

A. I believe it was.

Q. And you worked on a 36 hour week for how long?

A. I believe I worked on a 36 hour week up until the date of my transfer.

Q. Well, you were transferred on the 27th of April, that is when you got your notice, and the Big Muddy field went on a 48 hour week on May 1st, is that correct?

A. That is correct.

Q. What was the attitude, if you know, of your men, that is the Union men, members of the Union, toward going on a 48 hour week?

A. I don't know any of them that liked it very well.

Q. What was the attitude of the non-Union men toward going on a 48 hour week?

A. Most of them felt the same way.

Q. Now, was there any other organization in the field which was equipped to oppose the Respondent in its introduction of the 48 hour week, other than your organization?

A. Absolutely not.

[fol. 406] Q. Mr. Akolt asked you in regard to "Board's Exhibit 29", whether those men whose names appeared on that had been members of your Union at the time they signed that document, and had later withdrawn from membership. The question is confusing. I am asking you whether that was true or not.

A. Well, I will just take a look.

Q. I don't want detailed names, Mr. Jones.

A. There was—excuse me.

Q. Go ahead.

A. Most of the men on this petition belonged to our Local at the time this petition was signed, and some of them withdrew later.

Q. Well, was there any on there who had belonged to your Union back in 1934, and had dropped out, and later signed that petition, but didn't join?

A. There was, yes.

Q. Well, was there a considerable number, or can you give us the percentage?

A. I believe there was seven of them on there.

Mr. Akolt: What class would that seven be? I am not clear on that.

Mr. Shaw: Read the question. I think that will clear that up.

(The question was thereupon read by the reporter.)

Q. The rest of them were all members of the Union at the time that document was signed.

A. Most of them were. There is three or four there I am not absolutely positive, until I look at their receipts.

Q. You mean that about that time your organization had about 20 men in the field as members, the Big Muddy field?

A. No, there weren't that many.

Q. Well, about how many members did you have at that time, when the petition was signed?

A. There would be close to 20.

Q. From the field, that is?

A. Right near 20 from the field, yes, that belonged at that time.

Q. You made the statement that non-Union men had verbally [fol. 407] authorized you to bargain on the 48 hour week. What do you mean by that?

A. The 48 hour week, from what you could get talking to any of the men, they would have been willing for us at any time to take up matters of that kind both verbally and by the petition here.

Q. Well, Mr. Jones, you state "verbally authorized." You mean that when you were talking to the fellows about the rumor of the 48 hour week they expressed the desire for the Union to fight this, or what do you mean?

A. No.

Q. What do you mean?

A. I meant to go by this petition, and what at different times verbally they had said, that we would be allowed to bargain for them on any matters pertaining to wages and hours and working conditions.

Q. Well, had they talked to you specifically concerning the rumor of the 48 hour week?

A. Not specifically, no.

Q. But you heard the rumor of the of the 48 hour week, you said?

A. We did.

Q. And you knew how the men felt about it?

A. We did.

Q. And how did you know how the men felt about it?

A. We took it up at the meeting, and had our members inquire among the workmen of the field.

Q. This was during what time?

A. I believe that was about the middle of April, 1936.

Q. After you heard the rumor of Salt Creek?

A. That is right.

Q. You say that Lance Creek went on a 48-hour week about the first of January, is that your idea?

A. I don't know, that was somewhere — the time, I couldn't state exactly that it did. I knew that it had gone on a 48 hour a week.

Q. Was Salt Creek a stripper field at that time?

A. No.

Q. It was the biggest flush field in Wyoming, wasn't it? Is that right?

[fol. 408] A. It was.

Q. You said you worked some overtime out on the job at Big Muddy. What was the policy of the company toward payment for overtime while you had 36 hours a week?

A. They had no policy for the payment of overtime, any more than if a person worked a day overtime, or something



like that, there was time you were allowed to take days off and make up that time.

Q. Well, was there a regular policy of days or hours off to make up overtime?

A. There was no policy that I know of.

Q. Were you encouraged or discouraged in working overtime by your employers?

A. I think very much encouraged, in the Big Muddy.

Q. In what manner?

A. Well, if there was anything they wanted done they didn't hesitate to tell you to do it. If you took overtime to do it it was alright. There wasn't much attention paid to you if you did work overtime. There was lots of different angles on that overtime.

Q. Mr. Jones, you talk to the boys out at Parkerton from time to time, do you?

A. I do.

Q. That is the men who work at the Continental?

A. I do.

Q. Did you ever hear of an organization known as the Association of Continental Oil Company Employees, Big Muddy field?

A. I never have, no, not an association like that. I have known of an attempt to form one.

Q. Well, what do you know of an attempt to form an organization by that name?

A. Not much, only that three different men circulated a petition for employees in the field to sign, to form one. That was hearsay, I didn't see the petition.

Q. About what date was that, do you know?

A. Some time in the spring of 1937, but I am, I can't place what time that petition was circulated.

Q. Well, was it about a year ago, say?

A. It was about a year ago or a little over.

[fol. 409] Q. Did you ever hear anything about it after the petition?

A. I never did.

Q. Did you hear of any meetings on that petition? Did you ever hear of any constitutions or by-laws?

A. Not that I know of.

Q. Do you know of the officers of such an organization?

A. I don't know that they have one.

Q. Mr. Akolt was speaking about the policy of the company providing for a week's pay for discharged workers,

where the discharge was the result of a reduction of force. Do you recall that discussion?

A. I do.

Q. Do you recall that the company ever had any policy for employees that quit?

A. None whatsoever that I know of.

Q. Employees who quit were not paid a week's pay in advance, were they?

A. Not that I know of.

Q. You don't know of that?

A. I don't know of it, no.

Q. Well, did you consider that you quit, or were discharged, or what?

A. I didn't figure that I quit, or had been discharged.

Q. Well, what do you figure happened?

A. I figure I had just kinda been squeezed out.

Mr. Shaw: That is all.

Trial Examiner Holden: Does that conclude redirect?

Mr. Shaw: I am through with redirect.

Reecross-examination.

By Mr. Akolt:

Q. Do I understand that there was a criticism on your part of the overtime policy of the Continental?

A. I had no criticism to make, no. I have worked a good deal of overtime for the Continental, and always did if there was something that was necessary to do, I did it, but I didn't think it was necessary to go to the foreman and say "I am a good fellow, I worked some overtime for you."

[fol. 410] Q. But you did have three days coming, which you took off, April 27, on account of overtime work, didn't you?

A. That wasn't overtime work.

Q. That wasn't overtime?

A. That was my regular time off on the week, except one day, which I paid a man to take my place in the field.

Q. Well, I was just wondering if you had any criticism of the overtime policy, but you say you don't have.

A. The organization might have criticism with it. In our bargaining with the company we would have had an overtime phase in bargaining with the company.

Q. And against that overtime possibility, for which you were compensated in time, if you lost time when you weren't

working as the result of sickness or accident, why, your pay went on just the same?

A. I believe we were paying into an insurance on that, to that effect, we en't we?

Mr. Dyer: No.

Mr. Akolt: I am not sure.

A. I believe we were paying into an insurance to that effect, but Mr. Dyer says no, so I guess that—

Trial Examiner Holden: Do you object to Mr. Dyer's statement being in the record?

Mr. Shaw: I take it Mr. Dyer knows. No objection.

Q. On this raise to 48 hours per week, you knew, did you not, that that was coupled with an increase in wages?

A. It was coupled with an increase in wages by the month, and a decrease in wages by the hour.

Q. That is right, so that the total monthly income, though, would be more?

A. The total monthly income would have been more, yes.

Q. And one of the chief things that the employees were always wanting to get, was more total amount of money per month?

A. I don't know about the total, the way you speak of it.

Q. Well, there were two things they wanted?

A. One was more money.

Q. One was more money, and less work?

[fol. 411] A. We had asked for a 25% increase, which would have brought us up approximately to the wages of 1929, to which, although we didn't get the credit for it, those wages are about up to the 1929 level now, I believe, with the bonus and everything.

Q. When you were asking for this wage increase from the Continental, similar requests were made of the other oil companies around this part of the country, at the same time?

A. I have no knowledge of that.

Q. Wasn't it true that a similar request was made at the same time to Stanolind Oil & Gas Company?

A. If there was I had no knowledge of it. It was taken up by our committee at the meeting, and authorized; figured out a list of commodities, and the 1929 wages, and we figured that a 25% increase in our organization was that we figured on.



Q. Well, I don't think we will go into that, but anyway there were these two questions involved, and one was more money without longer working hours, if they could get it?

A. That is right.

Q. And at least they got more pay, but longer hours along with it?

A. Longer hours with it, and a cut in wages by the hour.

Q. And since that time there has been a reduction of hours, and an increase in wages?

A. How did the company happen to do that?

Trial Examiner Holden: May the question be answered, please.

A. Yes.

Q. So the hour rate is back to what now, 40 hours?

A. It is back to 40 hours.

Q. And the monthly income is up considerably from what it was when the 48 hours was in?

A. I couldn't say to that. I am not drawing wages from them now.

Q. I believe you did testify to it yesterday though.

A. Well, it might be that I did.

Mr. Akolt: I think that is all.

Trial Examiner Holden: May the record at some time show what is involved in this "lease to pump". The witness [fol. 412] testified that in 1929 he was given a lease to pump.

Mr. Shaw: Well, I think counsel for the Respondent could explain that very easily.

Mr. Akolt: I think, Mr. Jones, he has done it, he can explain it as well as anyone.

Trial Examiner Holden: Off the record.

(Discussion off the record.)

Trial Examiner Holden: On the record.

Examination.

By Trial Examiner Holden:

Q. I understood you to say that in 1929 you were given a lease to pump. Did you mean by that you were merely given a job pumping on a certain location?

A. At a certain location, yes.

Q. You testified that you talked with Mr. Bartels, I believe that is where you had the discussion about whether or not your job was terminated, then you continued with your work?

A. Yes.

Q. And then you testified as to a conversation with Mr. Bartels in April of 1936. I wonder if you recall any conversations that you had with Mr. Bartels between those two incidents, what the nature of them was?

A. Between which two incidents?

Q. The time where you had, when he came up and told you in effect that you were through, something about not operating during the night, and then you continued to work. Do you recall that?

A. Yes, I do.

Q. And then he came and talked to you in April, 1936?

A. That is right.

Q. I was wondering if you could recall conversations you had with him between those two periods?

A. Oh, we had different conversations.

Q. Whether of not anything was said concerning the Union?

A. Nothing more that concerned the Union. It was all field work, that is all work in general, that we had.

[fol. 413] Q. When, just day by day?

A. I would meet him, or go up after supplies, or something like that.

Q. Just bearing directly upon your work?

A. Just directly.

Q. I understood you to say that you had three days coming to you at the end of April, and then I understood that you took two, and exchanged work with a man for one. Did you have two days off or three days off?

A. I had two days coming. I worked a period of time on one lease so many days, three days for one helper.

Q. Well, without interrupting you, it is clear then that you had two days, and not three days?

A. It was my days off, yes. I had two days coming, and hired a man for the next day.

Mr. Akolt: Wouldn't it make that clearer to say that in order to get in the 36 hours a week it only took four and a half days one week and five days one week, is that correct, Mr. Jones?

A. That is correct.

Q. Since April 1936 tell me whether or not you had meetings with the Company concerning general working conditions?

A. I have been to no meetings with the Company since that date.

Q. I understand that about the time of your transfer, that is April 27, 1936, you had approximately eight members out of a total of approximately twenty six employees?

A. I believe so, that was the actual membership then, and possibly a couple more. I would have to look that up to give you the exact figures.

Q. Can you tell me, please, what the principal classifications are of these employees you have? Roustabouts, and you have pumpers?

A. We have roustabouts, pumpers, and what they call the bull gang, and then well pullers, in that classification in the Big Muddy field, at this time, I believe.

Q. Now, are you prepared to state in which classification most of your members were included, if they were included for the most part in a particular classification?

[fol. 414] A. I believe the most of our membership at that time was, the biggest percentage was pumpers.

Q. Pumpers? How many pumpers did they have out there at that time, if you know?

A. I will have to stop and figure it out. Let me see. I believe there was about eleven pumpers at that time, I don't remember exactly.

Q. Are you prepared to state, approximately, how many of them were members of your Union?

A. At one time they were all members.

Mr. Akolt: Maybe this will help. Respondent's "Exhibit 3".

Witness: That will help.

Q. I show you "Respondent's Exhibit 3", and ask you if you will tell me from that Exhibit how many pumpers were employed by Respondent in Big Muddy, in April 1936.

A. Seven at that time that I am sure of. I am not so sure about the relief pumpers.

Q. That is from the Exhibit?

A. Yes.

Q. Now, tell me, please, from the Exhibit, if you are prepared to so state, how many of those men were members of your Union in April 1936.



A. Seven.

Q. Now, with reference to the rumors concerning the 48-hour week, I understood you to testify that you thought your Union would make an effort to prevent it.

A. We did, we attempted to make an effort to prevent it.

Q. Are you prepared to state whether or not you discussed that matter with any employees?

A. We had.

Trial Examiner Holden: No further questions. The hearing will be in recess until 2:15.

(Thereupon at 12:45 P. M., the hearing recessed until 2:15 P. M.)

#### After Recess

(Whereupon the hearing continued, pursuant to recess, at 2:15 P. M.)

[fol. 415] Trial Examiner Holden: The hearing is in session.

Mr. Shaw: Mr. Examiner, I have just received the designation of you as Trial Examiner in this proceeding. I have had it marked as "Board's Exhibit 60 for identification". I now ask that it be admitted into the record as "Board's Exhibit 60".

Trial Examiner Holden: Without objection it will be received.

(Thereupon the document above referred to was marked as "Board's Exhibit 60" and received in evidence.)

Mr. Akolt: I desire to ask Mr. Jones a few more questions.

ERNEST JONES was recalled as a witness by and on behalf of the National Labor Relations Board, and having been previously sworn, was examined and testified as follows:

#### Recross-examination.

By Mr. Akolt:

Q. The Examiner, Mr. Jones, asked you some questions this morning, just before recess, with reference to the num-

ber of pumpers in Big Muddy field in April of 1936, and you referred in giving your answer to "Respondent's Exhibit No. 3", is that not correct, that you referred to that?

A. To this here (indicating)?

Q. Yes.

A. Yes.

Q. Now, if I understood your answer correctly, you stated that there were seven pumpers, is that what you stated?

A. Seven pumpers at that time?

Q. In April 1936?

A. At that time?

Q. Yes.

A. I am not sure if I stated that, I think there was more.

Mr. Akolt: I might say that, did the Examiner have the same impression as I did of the examination?

Trial Examiner Holden: That was my impression.

A. I didn't state for a fact that there were only seven, I know if I recognized seven then, there may be some more on there that—

[fol. 416] Q. Well, this Exhibit indicates that fourteen men were pumpers in April 1936, and I desire now, just to clear the record, that we go over the Exhibit again, and you verify, or refuse to verify, if you think it is not correct, what this Exhibit shows. It shows P. O. Bondurant.

A. I just went by the name over there.

Q. You didn't pay any attention to this classification?

A. I didn't pay any attention to the classification, those that I knew was pumpers.

Q. Well, this shows P. O. Bondurant as a pumper, is that correct, was he a pumper?

A. That is correct, he was a pumper.

Q. P. J. Burke, was he a pumper?

A. Yes, he was a pumper.

Q. L. D. Canning?

A. I am not positive whether he was a pumper or not, I couldn't state for sure, he might have been on the relief pumping or something like that, but not on lease.

Q. You were a relief pumper yourself at that time?

A. Yes.

Q. You don't know about L. D. Canning?

A. No.

Q. R. A. Dollar?

A. That is right.

Q. He was a pumper?

A. Yes.

Q. C. M. Erwin, he was a pumper?

A. Well, yes.

Q. C. V. Hansen, was he a pumper?

A. Yes, he was a pumper.

Q. L. L. Jackson, was he a pumper?

A. I expect he was, he was marked pumper here. I am not positive.

Q. Ernest Jones, that is you, you were a pumper?

A. I was.

Q. J. E. Peterson, was he a pumper?

A. I don't know what he was doing at that time, whether he was pumping or not.

Q. R. P. Peterson?

[fol. 417] A. He was a pumper.

Q. A. K. Shafer?

A. I don't know what Shafer was doing at that time.

Q. J. E. Spurgeon?

A. I believe that Spurgeon was up at the main battery, up at the booster station, pumping.

Q. That is in the field?

A. Yes, it is in the field.

Q. He was a pumper?

A. He was a pumper.

Q. Michael Lofter?

A. That is right.

Q. He was a pumper?

A. He was a pumper.

Q. J. W. Whitlock, he was a pumper?

A. I don't know whether he was or not.

Q. Well, if the payroll shows he was, you wouldn't be questioning it, would you?

A. I wouldn't be questioning it.

Q. Oscar Whitman?

A. I think Oscar Whitman was working in the refinery at that time, wasn't he?

Q. Well, I can't answer you, I was asking you the questions. This payroll shows that he was a pumper.

A. Charlie, oh, Oscar Whitman.

Q. Correct.

A. Yes, he was a pumper.

Q. Well, now, these names that I read you totalled fourteen?



A. That is right.

Q. And on this Exhibit, "Respondent's Exhibit No. 3", are all shown to be pumpers, do you have any reason to question that classification of all those fourteen?

A. No, I have no reason to question it.

Q. So, if you heretofore stated in this morning's testimony that there were only seven pumpers at that time, you consent that your testimony be now corrected to fourteen?

A. That is correct. I consent that it be corrected.

[fol. 418] Q. Now, I believe you did state that seven pumpers at that time were members of your Union?

A. I said seven of those men named as pumpers were members of our Union, that I know of, in good standing at that time.

Q. And that is out of the total membership of eight at that time?

A. Out of a total membership of eight, I believe so.

Q. When I said members of your Union, I meant in Big Muddy field.

A. Yes, in Big Muddy field, but I didn't give the direct answer of eight. I said there might be some more of them that would be in good standing, that I would have to look it up, I believe, in my testimony.

Q. That is your recollection, that there were eight.

A. That is my recollection. I can remember of one more now that wasn't a pumper that belonged, and I would have to look it up to be sure if there was any more.

Q. Now, coming back to the month of February 1936, how many members in your Union in the Big Muddy field?

A. Between eight and twelve, I couldn't give you the exact number without looking it up.

Q. And in the month of December 1935 how many Big Muddy field members can you remember?

A. I can't give you the exact number of that without checking it. If you wish the exact number I will check it.

Q. Well, pending your securing the exact number, can you approximate the number, like you have for the other one?

A. I couldn't say. Going over the membership from day to day that way, and jumping back and forth, I would rather get the exact statement off from the membership, and get it verified, and bring it up here so that I can give it to you exactly as it was. It is hard to keep that untwisted.

Mr. Akolt: I agreed with you on that, and if it is agreeable with everybody else, before the hearing is over you might do that.

Mr. Shaw: Very agreeable. We could get that Monday morning.

Witness: I will give you the exact membership of it.

[fol. 419] Mr. Shaw: I take it you would like the number of members in the Big Muddy field month by month during this period?

Mr. Akolt: Let me ask one question.

Mr. Shaw: Go ahead.

Q. Did you state, I forget, the figures, how many members you had in July 1935, when "Board's Exhibit 29", the petition, was signed?

A. I may have to, I am twisted on it now, and unless I get the exact figures I cannot tell you.

Mr. Akolt: Then I suggest you start this investigation you are going to make with the time that you secured the signatures on the "Board's Exhibit 29" petition.

Mr. Shaw: May I suggest that he make a month to month accounting, beginning with June 1935, through and including May 1936. Would that take them all, Mr. Akolt?

Mr. Akolt: No, I think it should come down to date.

Mr. Shaw: It will be very agreeable, because the number runs the same in that time as it is now.

Witness: From June 1935 down to date, is that satisfactory?

Mr. Akolt: That is correct. Now, I make this same suggestion, if agreeable, that the same data be furnished with reference to the refinery employees.

Mr. Shaw: That is certainly agreeable to me.

Witness: I have a full check on both of them.

Mr. Akolt: That is all for me.

Trial Examiner Holden: It is understood that this information is not being required, it is being volunteered?

Mr. Shaw: That is correct. Of course the testimony will be produced on Monday, and of course the witness at that time will be under oath.

May we go off the record for a moment?

Trial Examiner Holden: Off the record.

(Discussion off the record.)

Trial Examiner Holden: On the record.

[fol. 420] Examination.

By Trial Examiner Holden:

Q. Mr. Jones, you have been employed as a pumper, I understand?

A. That is right.

Q. What does a pumper do?

A. He gets the production from the wells, runs the engines, steams the oils, and anything else there is to do about the lease, cleaning up. I also had a water station to take care of on that line.

Q. Well, you have testified concerning the number of pumpers in April 1936. Do you have any way of knowing how many pumpers were actually working as pumpers at that time?

A. The best I would have was the payroll there, unless I would take time to figure it out.

Q. You do not know how many pumpers' jobs there were being filled at that particular time?

A. I do not know, no, not exactly.

Trial Examiner Holden: That is all.

Mr. Shaw: No further questions?

Mr. Akolt: No further questions.

Trial Examiner Holden: The witness is excused, with the understanding that he will be here Monday morning with the information requested.

(Witness excused.)

Mr. Akolt: Mr. Examiner, this morning I made a statement into the record on behalf of Respondent, Continental Oil Company, with reference to its willingness that any employees might feel free to come to this hearing to testify, without any fear of any lost time or otherwise. I have been asked to supplement that statement with the request that before that privilege is exercised the superior officer either at the field or at the refinery be consulted, so that the operations will not be crippled by too many leaving at the same time.

Mr. Shaw: I shall be very glad to cooperate with that, because, of course, I will be calling the witnesses, and I will advise counsel, and if he will cooperate by carrying that



information to the superior in charge, I think we can prevent any curtailment of operations or anything of that sort. [fol. 421] I shall be glad to cooperate in that, because of course I do not want these boys to lose any work, and I do not want to interfere with any of the operations of the Respondent Company.

Trial Examiner Holden: It is understood that we are concerned only with such employees as are called by the Board, so far as this particular matter is concerned.

Mr. Akolt: I do not know your procedure, as to whether they are called by the Board or the Union, or whom.

Trial Examiner Holden: Off the record.

(Discussion off the record.)

Trial Examiner Holden: On the record.

F. D. MOORE, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination:

By Mr. Shaw:

Q. State your name, please.

A. F. D. Moore.

Q. Where do you live, Mr. Moore?

A. Live in Rawlins, Wyoming.

Q. Rawlins, Wyoming?

A. Yes, sir.

Q. By whom are you employed?

A. State of Wyoming.

Q. In what capacity?

A. As a guard at the penitentiary.

Q. How long have you occupied that position?

A. Since a year ago last June.

Q. That is since June 1936, is that correct?

A. Yes, the first day.

Q. Prior to that time where were you employed?

A. At the Continental Oil Company field known as the Big Muddy. I had been there since the spring of 1919.

Q. Employed by the Continental Oil Company during all of that period?

[fol. 422] A. No, by the Midwest Oil Company, the old Continental, it was under Sidney Keoughan, and the present Continental.

Q. Let's go back, Mr. Moore, and review your employment history for a moment. You say you started there in 1919?

A. Yes, sir.

Mr. Akolt: Started where in 1919?

A. In the Big Muddy oil field.

Q. When were you first employed by the present Continental Oil Company, a Delaware corporation?

A. Well, I don't recall the date of the merger of the present Continental with the old Continental.

Q. Have you been employed there ever since that merger?

A. Ever since that, practically, with the exception of two months and a half during the year 1923, when I went out to the Coast to visit my parents.

Mr. Shaw: Off the record, please.

(Discussion off the record.)

Trial Examiner Holden: On the record.

Q. You started work there in the field in 1919?

A. I did.

Q. For the Midwest Refining Company?

A. I did. Midwest Oil Company. The first job was swamping for a teamster, to clear that up, that is helping a man that loads, driving a team.

Q. How long did you work at that?

A. Probably four months.

Q. And what was your next job?

A. Next job was roustabouting, general oil work.

Q. How long did you work as a roustabout?

A. Oh, probably five or six months.

Q. What was your next job?

A. Next job was a gang pusher.

Q. What kind of a gang pusher?

A. Running a gang pulling wells, cleaning up leases, anything that I was ordered to do.

Q. And after you were a gang pusher what job did you have?

[fol. 423] A. Next job was tool dressing.

Q. How long did you hold that job?

A. Oh, I held that job off and on, there were times that there was no tool dressing, when I went back roustabouting, and worked again.

Q. About how long were you a gang pusher, do you know?

A. Oh, probably six months.

Q. And you were a tool dresser off and on for about how long?

A. Oh, say that would bring me up to 1919, 1920, probably 3 years.

Q. After you stopped being a tool dresser what job did you get?

A. I went from tool dresser to driller, that is cleaning out wells.

Q. And how long did you drill?

A. Probably a year.

Q. What job did you get then?

A. I believe that took me up to 1923, I may be varied on these dates, then I went out to the coast in October, came back before Christmas, and the personnel in the field then was Mr. John Flanagan, tool pusher, and Mr. Russell. Mr. Russell came down to my house and said, "What are you going to do", and I said, "I may go out to Salt Creek". He said, "Mr. Flanagan wants to see you", so I came up—

Q. Just confine yourself to my question, if you will, please, and tell us what you did, after you were drilling.

A. Well, after I was drilling I went to, my memory isn't so good.

Q. Well, did you go on the booster station then?

A. No.

Q. You don't recall what job you had after you were a driller?

A. Just let me think. I will try to get that. Yes.

Q. What was it?

A. I believe that I went on rotary, and roughnecked for ten wells.

Q. Roughnecked on a rotary?

A. I did.

Q. Were you ever on the booster station?

[fol. 424] A. I was.

Q. When was that?

A. I don't recall the years, the date. I was on during the winter, that included pumping. It was about, it included pumping 6 rigs, 6 wells.



Q. And then after you were in this booster station where did you go?

A. I don't just recall. I did so much down there, changed on different things.

Q. Well, do you know what you were doing in 1929, Mr. Moore, about the time of this merger?

A. 1929? I couldn't truthfully say. I want you gentleman to understand I worked at so many different things down there.

Q. Well, perhaps we should approach it from the other end. What happened to you on April 27, 1936? Just give me generally, were you transferred or discharged or what?

A. I, drove into the company garage—

Q. I don't want—

A. Yes, I was transferred.

Q. What job did you have at that time?

A. Roustabouting.

Q. How long had you been roustabouting before that time?

A. I would say two years?

Q. What did you do before that?

A. I believe that that took in the date of my services as a roughneck on the rotary oil well.

Q. And you were roughnecking for a number of years, were you?

A. No, it didn't take long to put a well down in those days. We started in with electric, probably was ten wells, say one year.

Q. And before that what job did you have?

A. Before that I had came off tools.

Q. And how long were you on tools?

A. Oh, I was on tools off and on, say two years.

Q. Were you ever, did you ever work in the garage?

A. I worked in the garage, yes, sir.

[fol. 425] Q. For how long?

A. One winter.

Q. What job did you have?

A. Well, that was oiling and greasing the automobiles at that field. That also included what you call in the oil language a crum boss. It was a yard man. The duties of that, Mr. Examiner, you keep everything clean around the office, swept up, did anything at all that he asked you to do.

Q. You had been in the field, with the exception of those two months and a half—

A. Two months and a half.

Q. Two months and a half, pretty steadily then, from 1919 until April 27, 1936?

A. Steady all the time, except maybe for periods of illness.

Q. On April 27, 1936 was there any man in the Big Muddy field who had been there as long as you had?

A. Well, I can't say to that.

Mr. Akolt: You mean in the field itself?

Mr. Shaw: Yes, in the field.

A. (continuing) Pearl Bonderant had been there for a, quite a while, whether he was steady or not, I believe he was there before I entered the service, in fact I know he was, probably in '16 or '17.

Q. Anybody else there longer than you were except Mr. Bonderant?

A. Not that I recall.

Q. You were the second oldest man in the field, were you?

A. I believe so.

Q. Were you a member of Local 242?

A. I was.

Q. Of the International Association of Oil Field, Gas Well and Refinery Workers?

A. I was.

Q. When did you join that organization, Mr. Moore?

A. I don't just remember when the organization started, I wasn't a charter member, but I joined it probably one month later.

Q. Some time in the fall of 1933, do you recall?

[fol. 426] A. Well, that is about when it was.

Q. Did you ever hold office in that organization?

A. Yes.

Q. What office did you hold in that organization?

A. Oh, I was second vice-president, and committees, the Workmen's Committee, central labor union legislative committee, and Workmen's Committee.

Trial Examiner Holden: Off the record.

(Discussion off the record.)

Trial Examiner Holden: On the record.

Q. What do you mean by the central labor union?

A. The central labor union is a designated place for all unions in the state to meet, a legislative committee is a political organization, where a question is up, a man running for office, that labor was for or against him, we threshed that out, and I represented the Union on that question.

Q. You were the political arm of the Union, Mr. Moore, is that right?

A. Yes.

Trial Examiner Holden: Off the record.

(Discussion off the record.)

Trial Examiner Holden: On the record.

Q. Now, when were you made a member of the Workmen's Committee, Mr. Moore, do you recall?

A. Oh, I don't exactly know the date. It must have been along in 1934, '35, right in there.

Q. And you remained a member of that Workmen's Committee for about how long?

A. Up till the day, I believe, I got this transfer.

Q. Did you hold any office on that committee?

A. No. Mr. Jones was chairman.

Q. In 1924 did you participate in an election in the Big Muddy field, held by the Petroleum Labor Policy Board?

A. I did.

Q. Just after that election did you have a conversation with Mr. Dyer?

A. I did.

[fol. 427] Q. And where was that conversation held?

A. Well, Mr. Dyer visited my wife and myself, and talked over various matters. I knew there was something "in the wind."

Q. Well, where was it held, Mr. Moore?

A. At my home, Continental Oil camp.

Q. Proceed with the conversation.

A. We sat there for a while, talked over various matters with Mr. Dyer, and I said, "Let's take a ride, Joe, and go down to Luke Doyle's and get a beer", and Joe and I started east, but didn't go down to Luke's turned into a side road, I think it leads up to the lease where Slim DeClue is a pumper, we got to talking about Union affairs. He brought up this company Union, he says, "You have been



here a long time, and I would like to have you join this Union. He said, "Charlie over there I've been down talking to him a couple of hours. Well, in the meantime Joe has been advancing, a young man, and advancing right along, and congratulated him on that. I said, "Joe, I'd do anything in the world for you; but I believe I told you I wanted my children to respect me", and I wouldn't expect my wife or my family to respect me", and he wouldn't either, down in his own heart, if I turned down organized Labor after being a member of it, for this company Union.

Q. Anything more said in the conversation?

A. Well, he said, "Tough as you are, Dinty, you ain't going to get far."

Q. Did he say anything about Mr. Erwin to you in that conversation, other than what you have just said?

A. Yes, he said, "If you will sign this, I will guarantee that Charlie Erwin will head the company Union in this field."

Q. Did he show you a telegram that day?

A. He said, "If you want to help me swing it, I have just got a telegram from D. J. Moran complimenting me on getting this company Union started in Salt Creek."

Q. Now, Mr. Moore, you say you were transferred on April 27, 1936?

A. 26th or 27th.

Q. Well, now, tell us how you first learned of your transfer, and whom you talked to, and what was said. Tell us the whole story.

A. Very well. I drove into the Company garage, I don't [fol. 428] know whether it was my day off or not, it was late in the afternoon, three or four o'clock, and it was a garage that we paid \$3.00 a month to keep our car in. Mr. Bartels approached me and said, "I've got a transfer for you, Dinty." I said, "What do you mean, a transfer?" "Well," he said, "I've got a transfer for you to Hobbs, New Mexico. Mr. Jones said you could ride down with him," he said, "we'll ship your goods down." "Well," I said, "why am I being transferred?" "Well," he said, "I don't know." I said, "On account of my Union affiliation?" He said, "I can't say." "Well," I said, "You have got young men here, not only in service, but age, why don't you transfer them?" He said, "That is the Company's business." "Well," I told him, I said, "you realize the wife's sick." She was under the doctor's care at that

time, couldn't be moved. I said, "Under those conditions, and no answer why I am being transferred", I said, "I refuse." "Well", he said, "we want that house for the Company gauger." Well, I lived in it 12 years. Financially I was, my finances rather, was nil. I knew that the pay check wouldn't amount to much. I had also got into these coupon books, and I told him I'd move just as soon as I could. I had, in the meantime, the wife was so bad I had to move my son-in-law and my youngest daughter out there to take care of their Mother, so they moved into Glenrock. About seven or eight days later Mr. Bartels, Ray, met me, and I think it was along in the afternoon, he said, "Mr. Thomas had Mr. Shannon on the 'phone, and he's reconsidered on account of your wife's illness, and they will send you to Fort Collins, Colorado, to the Wellington field." I told him my answer was the same. Well, I am not sure, exactly, it was then, probably, let's see, that would take me into April, May, we will say in the middle of it, then probably five or six days afterwards, Mr. Bartels told me, he said, "We are going to put you back on the payroll." I said, "Where?" He said, "in the field."

Q. That is the Big Muddy field?

A. Yes. "Well," I said, "why is my work satisfactory, can I hold this job?" His answer was, "For the duration of your wife's illness."

Q. Where was this conversation held?

A. In Glenrock, Wyoming.

Q. In this last conversation, the one with Mr. Bartels, did he say anything about Mr. Shipp?

[fol. 429] A. Yes, wanted to know if Shipp was advising me. And I said, "No, sir." In fact at the time I had never seen Shipp, and made no complaint.

Q. Well, you saw Shipp at the meeting on the 27th of April, when you had a meeting with the Workmen's Committee over your transfer, didn't you, the 29th of April? You met Mr. Thomas?

A. Now, I will answer that honestly, I don't know.

A. You don't recall that?

A. I don't recall that.

Q. In this particular conversation did Mr. Bartels say anything to you about the Union, or about "you Union fellows"?

A. Well, the only thing he told me before, this conversation was in a friendly way but he seemed kind of hot under

the collar, he said, "If I'd got rid of you Union men long before this, we wouldn't have had this trouble."

Q. That was this last conversation?

A. That is the last conversation, that was the finish, yes.

Q. Did you ever receive a letter from any official of the Continental Oil Company, or from anybody connected with the Continental Oil Company, telling you that Mr. Shannon's order of the 27th of April transferring you had been re-cinded without conditions?

A. I never received one letter from him.

Trial Examiner Holden: Please address your answers to counsel.

A. I never received a letter from Mr. Shannon, personally. I think there might have been a mistake there, that he wrote it to the officials, and it was transmitted to me vocally, but I don't remember it.

Q. Well, why did you refuse to go back to the field?

A. Well, I knew the answer. It was organized labor.

Q. Well, would you have gone back to the field if you had had your job back on a permanent basis?

A. Would I have gone back to my job? Just what do you mean "on a permanent basis?"

Q. Well, you were told, were you not, that your job would last just as long as your wife was sick?

A. Yes.

[fol. 430] Q. And if you had had a permanent job, would you have gone back?

A. Yes, sir.

Q. That is, you didn't go back because you were told that it was to be a temporary job?

A. For the duration of my wife's illness.

Q. After that what did you do, Mr. Moore?

A. Well, I'm not ashamed to tell you, I was broke, and got out and hustled a job. I took a job at the State penitentiary at \$70.00 a month.

Q. You have been working there since?

A. I am working there now.

Q. You are here under subpoena, Mr. Moore?

A. I am.

Q. Did you receive a check from the Company about three weeks after the 27th of April?

A. Two or three weeks or so afterwards, I received \$25, or \$26.50, I don't know what it was for; but it was termination of services, and it was something unusual.



Q. Did you ever learn what it was for?

A. I have not.

Q. Going back to your first conversation of April 27th, did Mr. Bartel tell you what kind of a job you were going to get down at Hobbs, New Mexico?

A. Yes, he shipped me down there—

Q. What did he say to you?

A. (continuing) to assist on tools.

Q. Did he say anything about the wages they would pay?

A. No, not a thing, I didn't ask him, I don't know. Though I knew then, at the time, I said, "If the climatic conditions are such that she can't stand it", I said, "will you ship us back?" He said, "No."

Q. How old are you, Mr. Moore?

A. I am 56 this month.

Q. You were 54 then?

A. 54 years old.

Q. What is a job on tools?

A. A job on tools where there is a clean-out string of drilling tools is one of the hardest jobs of labor.

[fol. 431] Q. What kind of work is it?

A. A tool-dresser's work is to assist the driller take care of his engine, take care of one or two boilers, keep things cleaned up. You possibly would pull them tools from 84 feet to 110 feet in the air, and to get up there you have got to climb it.

Q. Would you have been able to do it at 54 years old?

A. No, there is no man unless he is a super-man can do that, and really do a day's work for the Company. It is impossible because you have your bits to drive, you run from 6 inches up to 10 inches, maybe they ran them on up to 20. You have got to handle a sledge from 3 minutes to 7 before you lay her down. Probably the sledges will run from 12 to 14 pounds. You are up against hot steel.

Q. Did you say anything to Mr. Bartels about that?

A. No, I didn't, I knew the answer.

Q. In your employment at the Big Muddy field, were you ever discharged?

A. No, sir.

Q. Or laid off?

A. No, sir.

Q. Ever disciplined in any way?

A. No, sir, not to my knowledge.

Q. Ever called on the carpet?

A. No, sir.

Q. Do you want to go back to work at the Big Muddy?

A. I do, under certain conditions previous.

Q. What do you mean by that?

A. I mean, in the name of justice. I should be reinstated in my work, and my back pay, and \$4500.00 insurance that I sacrificed, and the house to move into that you moved me out of.

Q. What do you mean by life insurance?

A. Well, after a certain term of service with the Continental they were good enough to give us up to \$2500.00, which cost us nothing, then they carried a blanket insurance that we could take out regardless of age, at 70 cents a thousand. I carried two, at \$1.40. It was taken out of my pay check.

Q. You lost that when you—

A. I lost everything.

[fol. 432] Q. When you left the employ of the Company?

A. I didn't leave the employ of the Company, I never quit, I had to move.

Q. Were you praised for your work at any time?

A. Well, I don't know, I have worked with drillers that was pretty hard, they kept me right with them, they are not in the habit of doing that unless you hit the ball.

Q. You say you had been doing roustabout work for about how long before the 27th of April?

A. Oh goodness, I don't know. I don't want to falsify anything, it was quite a while. I couldn't exactly say, truthfully.

Q. By the way, Mr. Moore, did you ever have a ten-years service pin given you?

A. Yes, sir, I had went to work in '19.

Q. 1919?

A. Yes. There was a break in my service then in '23 two months and a half, and later on I received this pin, a ten-years service pin. That was under the old Continental, not the present one.

Q. Mr. Moore, what was your rate of pay at the time you were transferred?

A. Well, sir, I believe I was getting \$120.00, now I am not sure of that.

Q. Was it the regular roustabout rate of pay?

A. I can't say to that either.

Q. It was \$112.50, wasn't it?

A. Well, now, I couldn't answer that truthfully, Mr. Examiner.

Q. Have you received any other earnings or monies for services since April 27, 1936, other than your salary of \$70.00 a month as a guard at the State penitentiary?

A. Have I received any—

Q. From any service or work?

A. You mean for work—. Listen, I will clarify that for you, I am a veteran of the Spanish American war, I draw a small pension, yes.

Q. I am not including that, I don't mean that at all, but have you worked any place else except at the penitentiary? [fol. 433] A. No.

Q. That is the only job you have had?

A. Yes, sir.

Q. That is the only wages you have received?

A. Yes, sir, earnings.

Q. The only other earnings you have received have been in the form of a pension?

A. Yes, sir.

Q. From the United States Government, is that correct?

A. Yes, sir, as far as earnings is concerned.

Q. Since you left out there the roustabouts have received a raise in pay, haven't they?

A. I don't know.

Q. You don't know about that?

A. No.

Q. You don't know what their present rate of pay is?

A. No.

Q. You haven't been back around the Big Muddy field much since then?

A. Oh, I go through, I still have friends there, but I ask no questions.

Trial Examiner Holden: Off the record.

(Discussion off the record.)

Trial Examiner Holden: On the record. We shall now take a ten minute recess.

(Thereupon at 3:20 P. M., a ten minute recess was taken.)

#### After Recess

(Whereupon the hearing continued, pursuant to recess, at 3:30 P. M.)



Trial Examiner Holden: The hearing is in session.

Cross-examination.

By Mr. Akolt:

Q. Mr. Moore, you stated how long you had been working in the Big Muddy field?

A. Yes, sir.

Q. You had only been working for the Continental Oil Company, a Delaware corporation, since 1929, hadn't you? [fol. 434] A. I don't know the date of that merger, but I will take your word for it.

Q. Most of the men in the Big Muddy field have been working there also since 1929, have they not?

A. Probably for the new Continental.

Q. So, as far as the present owner and operator of this field is concerned, you hadn't worked any longer than any one else, had you?

A. No, sir.

Q. Do you know if you were the oldest in years, not in terms of employment, but in actual years, working as a roustabout at that time?

A. I do not.

Q. You were 54 years of age?

A. 54 years of age.

Q. There was no other roustabout in the field that was that old?

A. Well, I don't know, had no opportunity to know.

Q. In your duties as a roustabout, was it not necessary, did you climb rigs?

A. As a roustabout, yes, you had to climb rigs, in case you took a line over, now and then, yes, going to change blocks. You people call them pulleys, we call them shives in the oil field.

Q. So you had to climb rigs at Big Muddy, the same as you would have to do in either Fort Collins or Hobbs, didn't you?

A. Well, it depended on what I was going to do.

Q. Do you know what a clean-out helper is?

A. Certainly. No. A tool dresser on a clean-out rig, I never heard that, I don't know whether the pay is the same as he would figure a tool dresser, my duties are the same.

Q. What you were transferred for, what you were told was, that you were to be a clean-out helper, as it not, at Hobbs?

A. No, sir, what I was told, "When you are transferred we will put you on tools."

Q. You were told that the new job would net you considerably more monthly income, were you?

A. There was nothing said. He said, "We will transfer [fol. 435] you as a dresser on tools, and you can ride down with Mr. Jones."

Q. You didn't ask what your wages would be?

A. Certainly not.

Q. Why "Certainly not"?

A. Because when you are on tools you pretty near know the scale, \$2.50 difference. If the driller is getting \$12.00, it will be \$8.50.

Q. Well, you didn't refuse to go then on account of any wage question?

A. I refused to go because I didn't know why I was being transferred.

Trial Examiner Holden: Just try, please, to answer the questions which you are asked.

Witness: What is that question, please?

(Thereupon the question was read by the reporter.)

A. No.

Q. Then you didn't inquire as to what your wage would be?

A. No, sir.

Q. And you apparently didn't know then, from that, that the job you were to be transferred to, your wage would be increased from \$117.50, or \$112.50, that you were getting, up to \$145.60 per month?

A. No.

Q. And you gave as the reason for not going that your wife was sick?

A. No, I didn't, to really know the answer, really, I am not bringing my wife into this. It was the principle of the thing. I knew, and I still think it was on account of my dealings on organized labor, and being active in the Union.

Q. Didn't you state, as you told a while ago, that you told Mr. Bartels that you didn't see how you could go on account of your wife's illness?

A. I believe my statement was like this; I said, "My wife is ill and I can't move her."

Q. And was your wife ill?

A. Very ill.

Q. Was she confined to bed?

[fol. 436] A. Yes, sir.

Q. And you told that to Mr. Bartels, didn't you?

A. Oh, everybody knew that.

Q. And he told you he would report that condition to Mr. Thomas and Mr. Shannon, did he not?

A. He did not.

Q. Well, you said he came back and told you in the course of a week, or seven days, or something, that he had reported your wife's condition to Mr. Shannon, and had received directions that you should be transferred to Fort Collins, didn't he?

A. He didn't make any statement of that kind at that time. He came back later and told me that.

Q. When was later?

A. I think I said within seven or 8 days.

Q. Well, he did tell you though that Mr. Shannon had said on account of your wife's illness that they would transfer you to Fort Collins, if you didn't want to go to Hobbs?

A. The statement was that Mr. Shannon had reconsidered on account of my wife's illness, and he would send me to Fort Collins.

Q. Now, Fort Collins is a nice town, isn't it?

A. I don't know. I was never there.

Q. You didn't care whether it was or not, you wouldn't go there anyway?

A. No, to be honest with you, I wouldn't.

Q. And was your wife still ill at that time?

A. My wife was still ill at that time, and hasn't been well since.

Q. What?

A. Hasn't been well since.

Q. Then you had another conversation with Mr. Bartels five or six days you say, later than that first conversation?

A. Yes, sir, somewhere around that.

Q. And at that time Mr. Bartels handed you a letter from Mr. Shannon, did he not?

A. Not that I recollect. I heard that yesterday afternoon, and I don't remember of ever getting a letter from Mr. Shannon.

Q. Don't you recall that Mr. Bartels handed you a letter [fol. 437] from Mr. Shannon, and that you took it and read it and handed it back to him?



A. No, I do not.

Q. You just don't recollect that?

A. I don't believe I received one, now. There may be a chance that I am mistaken, but I don't believe that I received a letter from Mr. Shannon.

Q. Well, leaving that aside, if you don't recollect that, why, you were definitely told that your transfer either to Hobbs or Fort Collins had been revoked, due to your wife's illness?

A. Yes.

Q. And you were told that you could go back to work at the Big Muddy field?

A. For the duration of my wife's illness.

Q. All right, you said that Mr. Bartels said you could go back for the duration of your wife's illness?

A. He did.

Q. Now, how long did your wife remain ill?

A. My wife has never regained her health. I don't know what the doctor diagnosed it as, but there's a time in all women's lives, when there is a change, according to the doctors, she should never do any more work, she has broke up housekeeping, she has been down here under a surgeon's care for about 6 weeks, and I expect to accompany her home when she goes to Rawlins, Wyoming.

Q. And you had explained that to Mr. Bartels, or Mr. Thomas, or one of them, had you, at that time?

A. Well, I answer it this way: I listened to testimony yesterday, that Mr. Thomas said he investigated it. Mr. Thomas never had been in my house, I don't know how he could investigate it. We lived right straight across the street, he certainly knew what was the matter. His wife knew, all the field knew.

Q. Well, my question was, you imparted to Mr. Bartels or Mr. Thomas the apparent paramount condition of your wife's health, didn't you?

A. I told them, yes. As far as talk was concerned, we never had a word at all.

Q. Well, then Mr. Bartels, you talked with Mr. Bartels? [fol. 438] A. With Mr. Bartels, yes.

Q. So it was generally understood then that your wife's illness was a matter of indefinite duration, wasn't it?

A. Yes.

Q. And according to what you said, that Mr. Bartels told you that you could go back to work for the period of your wife's illness—

A. Yes, sir.

Q. So, even with that qualification, he was offering you an indefinite return to work, wasn't he?

A. No, not under the circumstances, with my years of service, I don't think so. The answer should be, he should have said, "Dinty" or, "Mr. Moore, we are going to put you back on the job as long as you hit the ball, you can continue here."

Q. A lifetime job?

A. Well, life's pretty short. I'm getting older in the service. Nature takes her toll.

Trial Examiner Holden: I think you have answered the question.

Witness: Yes, but I would like to explain a little farther. As you get along in age, Mr. Counsel, you are not as good as you used to be. A lot of fellows say you are just as good as you used to be, but physically you have failed.

Q. Is your wife's health any better now than it was at that time?

A. Some, yes. She has nothing to do, we have one room, no washing or anything like that.

Q. Now, you just stated that, intimated that your physical condition isn't what it used to be, is it?

A. Heck, no.

Q. Oil field work is pretty strenuous work, isn't it?

A. Hard work.

Q. It is harder for a man of your age to do it than for a younger man, isn't it?

A. Yes, it should be.

Q. Now, when a foreman in the field has got charge of turning out work, isn't he more apt to get proper work turned out more efficiently by younger men with more strength?

[fol. 439] A. Why, certainly.

Q. If you had accepted the offer of employment, even coupled with the qualification that you have stated, you would still be at work, wouldn't you?

A. No, I don't think so.

Q. Why not?

A. Well, on this advancement as a tool dresser, or, say a helper on a clean-out string, I couldn't hit the ball at my age, swinging a sledge, keeping up your rig, tending your boilers and your engines.

Q. Now, you misunderstood my question, if I understood your answer you think I asked you about tool dressing work in Hobbs, New Mexico. My question was if you had gone back to work at Big Muddy, as offered to you, you would still be there under the offer given to you?

A. I will answer it in this way: On the remarks Mr. Bartels made to me, "For the duration of the wife's illness", now, she is not bed-ridden, she is able to get around and take care of one room. I don't believe I'd been there.

Q. How long was she bed-ridden?

A. Oh, we'll say in the month of March she was taken sick.

Q. How long did she continue to be bed-ridden?

A. Well, we moved her, I had to get out of that house, I had orders to get out of it. Oh, I think it was a week or two, you can verify that.

Q. And that was all the time that she was in bed, was this couple of weeks?

A. Well, I don't know, I could find that out from my family physician, Dr. Stuckenhoff, of Casper.

Q. You were earning \$112.50 a month, weren't you?

A. Somewhere around there.

Q. You rented a house?

A. I had lived in it for 12 years.

Q. You rented a house, didn't you?

A. Yes.

Q. How much rent did you pay?

A. \$18.00 including a garage.

Q. And then you paid your other living expenses out of your salary, and your other income?

[fol. 440] A. Yes, sir.

Q. Now, you are getting how much at the penitentiary?

A. \$70.00.

Q. And what, your board and room?

A. No, get your room.

Q. You get your board up there if you want to eat at the prisoners' table?

A. Well, you can call it board, it is maintenance as far as that is concerned, yes.

Q. So, in addition to the \$70.00 you get your board?

A. Yes.

Q. And you went to work there, when?

A. The first day of June '36.



Q. You said something about losing your insurance. Why didn't you convert it into a policy, as you were permitted to do?

A. I never saw that chance given to any man, as far as I knew. It was never mentioned to me.

Q. Did you ever look at your policy?

A. No.

Q. Well, do you think if you had looked at it you would have found out what your privileges were under the policy?

A. Possibly, yes.

Q. Don't you know that the group insurance plan that was in force at that time provides: I am quoting now: "In case of termination of employment for any reason whatsoever, or transfer to commission status, the insured employee shall be entitled to have issued to him by the Travelers' Insurance Company, without medical examination, a policy of life insurance in any one of the forms customarily issued by that Company, except term insurance, in an amount equal to the amount of his life insurance under this plan at the time of such termination, provided an application is made to the insurance company within 31 days."

Q. Did you know about that?

A. I didn't know about that, no.

Q. But you had your policy?

A. Yes.

Q. And you were furnished with a copy of this pamphlet?  
[fol. 441] A. Yes.

Q. Known as "Group Life Insurance".

A. Yes.

Trial Examiner Holden: Is a copy of the pamphlet to be offered in evidence?

A. That is the reason I read that, so that I could hand that book to Mr. Thomas. I suppose one could be procured some place.

Trial Examiner Holden: It would be helpful.

Mr. Akolt: Could you get one, Mr. Thomas?

Mr. Thomas: I think so.

Mr. Akolt: We offer in evidence "Respondent's Exhibit No. 4".

(Thereupon the document above referred to was marked as "Respondent's Exhibit 4", for identification, witness Moore.)

Mr. Shaw: Where is the place you read there?

Mr. Akolt: Over near the last.

Trial Examiner Holden: Is it understood what it is? Are you willing to stipulate what it is?

Mr. Shaw: I think the document speaks for itself.

Mr. Akolt: This is a pamphlet of Continental Oil Company, the foreword in the front of it, explaining the group life insurance plan, health and non-occupational accident and benefit plan, permanent and total disability benefit plan, for employees of Continental Oil Company, effective January 1, 1934, revised January 1, 1935.

Trial Examiner Holden: As such it will be received, without objection.

Mr. Akolt: And this is the pamphlet from which I quoted a moment ago, and which Mr. Moore stated a similar pamphlet had been received by him from the company.

(Thereupon the document above referred to, previously marked as "Respondent's Exhibit No. 4 for identification," witness Moore, was received in evidence.)

Q. You made some reference, Mr. Moore to a petition which you said Mr. Dyer asked you to sign, back in 1934? [fol. 442] A. I believe I did, yes, sir.

Q. That was a petition, was it not, directed to the Petroleum Labor Policy Board, asking for another election in the Big Muddy field?

A. I don't believe it was, no. The way I understood, Mr. Dyer, it was a petition to form a company Union.

Q. You didn't look at the petition?

A. He wouldn't show it to me.

Q. He asked you to sign it, didn't he?

A. He asked me if I would sign it.

Q. Well, don't you know that a petition to the Petroleum Labor Policy Board signed by some 22 employees in the Big Muddy field was sent to the Labor Policy Board asking for another election in the Big Muddy field?

A. No, I didn't know that, I construed the thing rather as a Union, a Company Union, and anything that was painted as such I didn't want anything to do with.

Q. Mr. Dyer was a friend of yours, wasn't he?

A. Yes, sir, I hope he is yet.

Q. Your Union activity was well known at that time to Mr. Dyer and to all other officials of the Continental?

A. I believe so, otherwise Mr. Dyer would have never came to me.

Q. And you were not fired or disciplined in any way for refusal to sign the petition you spoke of yesterday?

A. I told Joe, I said, "I suppose this will not do me any good." He said, "As long as I got a job, it won't make any difference."

Q. So nothing happened to you because of your refusal to sign that petition?

A. Not a thing.

Q. You have been openly active in Union affairs?

A. Certainly.

Q. And there had been no discharge of you before this attempted transfer, had there?

A. Not that I know of.

Q. You knew, didn't you, the latter part of April 1936, that they had to reduce the force by four in number in the Big Muddy?

A. No, I didn't.

[fol. 443] Q. Well, you were told that, weren't you?

A. No, I wasn't told that. I got no explanation at all.

Q. Well, for some time, hadn't they been making changes in the Big Muddy field in the way of concentrating or centralizing the power plants?

A. Yes, they were putting them on little rods, I realize that, but I can't see it calls for a reduction of force. There wasn't many workers there.

Q. And then when the field went on the 48 hour week, that necessarily caused a less number of men to be required, didn't it?

A. Well, sir, I don't know. I wasn't there when the 48-hour week went in.

Q. Well, you would know?

A. Yes, there should have been a reduction on account of longer hours, that is, if the men put out, that is, did the work.

Q. So that meant that somebody had to be either discharged entirely or given an opportunity to go some place else in the Company organization, didn't it?

A. Yes.

Q. And you were given that opportunity rather than a discharge?

A. Well, you can call that an opportunity, but I don't look at it that way. I thought that it was a discharge for



me; for me to go a little farther, there was very few men outside of Mr. Dyer here that knows the requirements of a man working on tools. I had rather, if the freeze-out had come, been discharged here than 800 miles from my children, which, I think really would have been the answer, because if I couldn't cut her at the age of 54 years, there is no charity in the oil game, if you can't hit the ball, you are out, and that is what would have happened to me. I thought it at that time, and I still think it. It was just another way of getting me away from the Union, my Union activities, and to reduce the small number we had that belong to the Local, interested in there, and fought. That was something the Government gave us the privilege of doing, provided we did it legitimately. I refused it on that account, and I think now, as I thought then, it was on account of my activities in the Union, the reason of this transfer.

[fol. 444] Q. Did you feel that the mere fact that you belonged to the Union and were active in the Union should have prevented the Continental in the exercise of its best judgment in transferring you?

A. Well, I don't know what the Continental's best judgment was, but that transfer of me, they made a mistake.

Q. In your opinion?

A. In my opinion. I am just a laboring man.

Q. Looking at it only from your own individual interest?

A. Yes, sir.

Q. You talked about transferring 800 miles away?

A. Yes.

Q. How far is it to Fort Collins field.

A. I don't know, I was never over to Fort Collins.

Q. That isn't anything like 800 miles, is it?

A. Well, a couple of hundred miles to a tramp is the same as 800 miles. There is no chance of getting back.

Q. So it wasn't the 800 miles, it was any transfer you objected to?

A. Yes, sir.

Q. And it wasn't the question of the character of the work you said that Mr. Bartels said you would do when you were transferred, but it was the question that you didn't want any transfer, wasn't it?

A. Well, we will split that up. I knew I couldn't cut the mustard down there on tools. I would have been amongst strangers, they wouldn't have carried me, and the policy in the oil game, if you can't do your work, the driller turns you

in, and you are out. That is one thing. Then the principle of me, I think, being transferred out of the field on account of my activities in the Union, I wouldn't have accepted it.

Q. Did you ask if that particular character of work wasn't agreeable to you, you would be given an opportunity to do some other work?

A. No, that bolt out of the blue come so fast it kind of went over my shoulder.

Q. But you had a couple of weeks that you thought it over, and still refused, didn't you?

A. My answer was, yes, sir, I refused it.

[fol. 445] Q. And then you were given an opportunity to go back after that?

A. For the duration of my wife's illness.

Q. Now, you said you didn't want to go into a new field because the other more active men with whom you weren't personally acquainted wouldn't be so apt to carry you along, isn't that it?

A. I put it this way: I have been in the game so long there might have been somebody down there that would stake me to get back here, but that is just what would have had to be done, because I was clean broke.

Q. You were doubtful whether you could do the work unless you were carried?

A. I wasn't doubtful at all. Knowing the oil game, at the age of 54 you can't cut it.

Mr. Akolt: I think that is all.

Redirect examination.

By Mr. Shaw:

Q. How many men were there in the roustabout classification?

A. I can't tell you that truthfully.

Q. At Big Muddy?

A. Well, we had 2 gangs, had the bull gang that took in all general work, pipeline work, anything we was able to do. A very experienced man at the head of it, Mr. Jefferies, at that time. Most of the roustabouts worked, I don't know which payroll, maybe there was four men on it one time, maybe there was five, I don't know.

Q. Do you know how many roustabouts were in the Big Muddy field at the time you were transferred?

A. I do not.

Q. Do you know approximately how many?

A. No, sir.

Q. Well, were there as many pumpers as roustabouts, or as many roustabouts as pumpers?

A. Well, as far as that is concerned, there was a couple of more pumpers than there was roustabouts, may be, I am not sure. I suppose there was eight or nine. Let me say seven. That would be pretty close to it. I think there was seven or nine pumpers, I am not sure, counting the relief, and sometimes that ran may be two more or maybe less.

[fol. 446] Q. I am looking at "Respondent's Exhibit 3", being a list of employees at the Big Muddy field in April 1936, and I find the following men, Mr. Moore, listed as roustabouts: Kent Bormuth.

A. He was on the well pulling machine, and tool gang.

Q. Albert Collins?

A. Albert Collins was a roustabout.

Q. He was a regular roustabout?

A. Yes, sir.

Q. The same job as you had?

A. Yes.

Q. J. T. Hagney?

A. Oh, he operated around, he changed and worked in the office, and gauged, and different things. Maybe he was listed as a roustabout.

Q. Was he a regular roustabout at that time?

A. He knew more than I did, he had clerical knowledge and I didn't.

Q. H. L. Jones?

A. Yes, he was transferred up there from Salt Creek. He was a carpenter, a good man.

Q. A regular roustabout, was he?

A. I don't know, he did anything and everything, very handy man.

Q. J. E. Morgan, was he a regular roustabout?

A. Yes.

Q. J. H. O'Neal, was he a roustabout?

A. Yes, I guess they had him classed as that.

Q. Was that his regular job?

A. I believe, when I left there, I believe he was pumping. I am not sure now, a relief pumper. He worked around different places.

Q. P. S. Purcell?



A. Purcell was, well, I don't know, once in a while he would take the place of a gang pusher. Very able man, an experienced man. I believe he was listed as a roustabout.

Q. Simon, was he a roustabout?

A. Simon was in the same category as Bormuth, he was on the pulling machine.

[fol. 447] Q. Am I correct in stating that there were only two regular roustabouts in the field then, that is you and Mr. Collins?

A. I don't know how to answer that. These roustabouts was listed, there was times when there was three or four, maybe five, when there was a truck coming in, but whether they was taken off some other list outside of roustabout, I don't know.

Q. Did you ever find out who got your job when you left, if anybody got it?

A. No, I didn't ask at all, didn't pay any attention to that.

Q. Did you have any particular job as a roustabout, or were you sent out to do anything?

A. I tried to do as I was told.

Q. Well, you spoke about, for example, Kent Bormuth having a job on one particular thing.

A. On that pulling machine, yes.

Q. Well, were you attached to any particular machine like that, or anything?

A. No, not at all.

Q. You were just an all-around, just a common roustabout?

A. Just a common roustabout, yes.

Q. Were there any other roustabouts transferred when you were?

A. Well, I don't know, Canning had been there quite a number of years too.

Q. He was listed as a pumper, wasn't he?

A. I believe he was pumping, yes, over around the booster or some place there.

Q. Outside of Canning can you tell of anybody else that was a roustabout that was transferred when you were?

A. No, I can't.

Q. Now, do you know how long Kent Bormuth worked in the field?

A. I'd known him since he was a child, but I don't remember when he went to work, No.

Q. Did he have a long service in the field?

A. He had been there a few years, yes. I don't know just how long.

[fol. 448] Q. How about Collins, how long had he worked there?

A. Collins hadn't been there very long, probably a year before I left.

Q. Had he been transferred, or a change made?

A. He was a new man.

Q. How about Hagny?

A. Hagny came originally from the Ohio Oil Company, but I don't know whether he worked in extra or not.

Q. How long had he been in the field?

A. I believe Jack was there a couple or three years, he was transferred later on to Salt Creek.

Q. How about H. L. Jones, how long had he been there?

A. Jones, he'd been there about two or three years. He come up from Lance Creek, I believe, he was in the service fourteen or fifteen years.

Q. Now, you mean in the Company's service?

A. Yes.

Q. How about Morgan?

A. But Morgan, he worked at the old Standard refinery across from the Continental. I think Bud had been there a couple of years. He was a new man a couple of years before.

Q. A couple of years before you were transferred?

A. I believe about that time.

Q. What about Purcell?

A. Purcell, I don't know whether he was transferred from Salt Creek or not. Also an experienced oil man. I think perhaps two or three years, something like that.

Q. At Big Muddy?

A. Yes, sir.

Q. Do you know how much Company experience he had, how much Company service?

A. No, I don't.

Q. You don't know how long he had been with the Company?

A. No.

Q. J. H. O'Neal?

A. He come up from Oklahoma, a couple of years, a year and a half before, something like that?

[fol. 449] Q. He was a new man?

A. He had been there about a year or a year and a half.

Q. How about Everett Simon?

A. Everett must have been there at least six years, six or seven, close to that.

Q. Do you know whether or not you were the oldest roustabout in point of service?

A. No, I never give it a thought. Bondurant had been there quite a while.

Q. Well, he was a pumper, wasn't he?

A. Yes, he was pumping when I left.

Q. I am talking about roustabouts.

A. I don't know of any roustabout who had been there longer than I had.

Q. You don't know whether you were the oldest roustabout in the field or not?

A. Well, since I have been wised up by the officers, I believe I was.

Q. You believe you are, or——

A. I believe I was.

Mr. Shaw: I think that is all.

#### Examination.

By Trial Examiner Holden:

Q. Mr. Moore, with reference to the merger of the Continental Oil Company——

A. Yes.

Q. Did you have any way of knowing when that happened?

A. Well, to say definite, we knew it was rumored, but that is as far as our information was concerned.

Q. Well, so far as you were concerned, when the merger occurred, did it affect, or raise or reduce your pay, or anything?

A. No, to my knowledge it didn't.

Q. Had you been paid by cash or by check?

A. By check.

Q. Since when?

A. Ever since I have been in the field, I believe.

Q. Do you recall by whom your checks are signed at the present time?

[fol. 450] A. When I left the service, you mean?

Q. Yes.

A. No, I can't say.



Q. What Company?

A. The Continental Oil Company.

Q. And by whose checks were you paid before this merger?

A. By the Continental Oil Company. You see the Company originally was the Continental Oil Company, and when Mr. Moran, D. J. Moran, took charge, I think he left the Texas and went with the Marland. He merged the two.

Q. So far as you are concerned, your method of payment was the same before the merger and after?

A. Yes, sir, exactly.

Q. Was there any change in your immediate supervisors?

A. Well, let me see now—

Q. Just whether or not you recall?

A. I am trying to, I don't want to make a false statement on that. I believe there was a little later, yes. John Flannagan, now deceased, was the Superintendent, and a man who is now at the head of the State Board of Equalization, Mike Foley, was Superintendent of the old Company.

Q. I am just trying to ask you if you can recall on or about the time of the merger, if there was any change in your supervisors?

A. That is just what I am trying to get at.

Q. Now, you refer to Mr. Flannagan and Mr. Foley. They were under the old plan, and the change was made at the time of the merger?

A. I am sure it was a little afterwards.

Q. Now, I will ask you whether or not, as you recall, any statement was made to the employees concerning the fact that the merger had been accomplished, or was to be effected?

A. Not to my knowledge, sir.

Q. So that all the knowledge you had of the merger was—

A. As a working man, I kept on working.

Q. What you heard people talk about?

A. Yes sir.

Q. You have mentioned a Mr. Bonderant?

A. Bonderant.

Q. Do you know how old a man he is?

[fol. 451] A. Oh, Pearl must be along 55, 56, 57 years old.

Q. He is a pumper, I believe you testified?

A. He was pumping when I left the field.

Q. You were a pumper at one time, were you?

A. I worked as a pumper, but I was working on the booster station, but we had a string of wells along the road, we will say six or seven, but that was my duties, including those wells and the booster station.

Q. At the time Mr. Dyer spoke with you in 1934, what was his position with the Company, if you know?

A. I don't know whether he was manager of pipe line or production or what he was, he was stationed at Ponca City.

Q. With reference to your insurance—

A. Yes, sir.

Q. Can you tell me for approximately how long a period you paid this premium for the two extra thousand dollar policy?

A. I couldn't tell you, I probably could find out.

Q. Well, was it more than two or three years?

A. I took it as soon as it was, as the Company offered it to us, it was under that insurance plan.

Q. Do you recall whether it was more than two or three years?

A. It was more than three years, I believe.

Q. I show you a pamphlet introduced in evidence, "Respondent's Exhibit 4", which is dated January 1, 1934. Is that the only one that was issued by the Company?

A. Yes. ✓

Q. Do you recall whether or not that is approximately the date when you started?

A. Well, if the attorney says then is when it started, it must have been. I don't recall. I will take his word for it.

Q. Well, is it just of your own recollection?

A. Yes, sir.

Q. Now this was 70 cents for what?

A. 70 cents a thousand.

Q. How often did you pay it?

A. We paid it every month, I took \$2000.00, they deducted \$1.40 from my pay check.

[fol. 452] Q. Now, at the time you left the employment, or a short time thereafter, did any representative speak to you concerning this matter of insurance?

A. No, sir.

Q. From your testimony I understand that at least so far as you are concerned you have lost any right to the \$2500.00 the Company furnished, or to the \$2000.00 on which you paid premiums personally?

A. Will you restate that question, please?

(Question was thereupon read by the reporter.)

A. That is right.

Trial Examiner Holden: No further questions.

Mr. Shaw: I have no further questions.

Mr. Akolt: Just one question.

Recross-examination.

By Mr. Akolt:

Q. Which rights you wouldn't have lost if you had exercised the conversion rights under the policy to which you were entitled, would you?

A. Well, it seems if you were good enough to try to keep me on the payroll, they should have mentioned that.

Mr. Akolt: That does not answer my question.

Trial Examiner Holden: Read the question please.

(The question was thereupon read by the reporter.)

Q. That affects just the \$2000.00, does it?

A. No.

Trial Examiner Holden: Is the question answered?

Mr. Akolt: Yes.

Mr. Shaw: I have one question on that point.

Redirect examination.

By Mr. Shaw:

Q. Mr. Moore, do you know what it would have cost you to convert your policy to a single policy out of the group insurance policy?

A. Well, I don't know, it would have been terrific, up over the age of 50, to be honest with you, I don't think they would carry it with me over the age of 50. It is awfully [fol. 453] hard for a man to get insurance at my age, or the age I was then, 54.

Q. You could have gotten it without a physical examination, but do you know what your rates would have been?

A. No, I don't.

Recross-examination.

By Mr. Akolt:

Q. And you didn't inquire?

A. No.



Q. The question has been asked you whether anyone on behalf of the Company, after you quit, told you about your insurance privileges. I will ask you one further question on that. Did anyone in connection with your Union give you any advice concerning your right to convert your policy?

A. No, sir.

Q. You just forgot the matter entirely, didn't you?

A. Well, as I stated, there is no use going into it, as far as I knew it was losing my insurance, you might say making a bum out of me.

Q. But you wouldn't continue in your job with the company, or go to Hobbs, or go to Fort Collins? You had three opportunities?

A. I had three opportunities, yes, but I saw what the principle was, I saw the picture.

Mr. Akolt: That is all.

Trial Examiner Holden: The witness is excused.

(Witness excused.)

CHARLES N. ERWIN, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Shaw:

Q. You are under subpoena, are you Mr. Erwin?

A. I am.

Q. May I have your subpoena?

A. Yes, sir (handing same to counsel).

[fol. 454] Q. Will you give the reporter your full name?

A. C. N. Erwin.

Q. Where do you live, Mr. Erwin?

A. Parkerton.

Q. Parkerton, Wyoming?

A. That is right.

Q. How long have you lived in Parkerton?

A. Since the first of December, 1925.

Q. By whom are you employed, Mr. Erwin?

A. Continental Oil Company.

Q. In what capacity?

A. Pumper.

Q. How long have you been employed in the capacity of a pumper for the Continental Oil Company at the Big Muddy field at Parkerton, Wyoming?

A. I think it was about the 10th of December, 1925.

Q. Prior to December 10, 1925, where were you employed?

A. Elk Basin, Wyoming.

Q. By what company?

A. Continental Oil Company.

Q. How long were you employed in Elk Basin?

A. From the first of September till the 1st of December.

Q. 1925?

A. 1925.

Q. As a pumper?

A. No, sir.

Q. In what capacity?

A. I was lease foreman.

Q. Lease foreman?

A. Yes, sir.

Q. And prior to that, what job did you have, Mr. Erwin?

A. I worked for the Ohio Oil Company.

Q. At what place?

A. Elk Basin.

Q. In all, how long have you been in the oil field work?

A. Twenty years.

Q. And about 13 of those years, I take it, you have been with the Continental Oil Company?

[fol. 455] A. Yes, sir.

Q. The rest of the time with the Ohio?

A. Yes, sir.

Q. Mr. Erwin, are you a member of Local 242 of the Oil Workers International Union?

A. I am.

Q. How long have you been a member of that organization?

A. December, approximately, '33.

Q. Do you hold any office in that organization?

A. I am president.

Q. How long have you been president of the organization?

A. Since the first part of '34.

Q. Do you hold any other office in the organization beside president?

A. I was first vice-president to January 1, 1934, and then assumed office when the president quit, and was elected president the first of June '34.

Q. And you have been president up until the present time?

A. Yes, sir.

Q. Were you in the field in the summer of 1934?

A. Yes, sir.

Q. And I take it that from June 1934 you were president of your Union, Local 242, is that right?

A. Previous to June. I was the president, I don't remember whether it was a month, maybe it was May or April, that I assumed the office.

Q. And then you were elected to office in June, is that right?

A. Yes.

Q. Did you participate in an election in the field in July 1934, held by the Petroleum Labor Policy Board?

A. Yes, sir.

Q. Shortly after that election was conducted, did you have a conversation with Mr. Dyer?

A. I did.

Q. And what was that conversation?

A. That is a pretty big order.

[fol. 456] Q. Well, give it to the best of your recollection. First of all tell us when it occurred, at what time of day.

A. About, as I remember it, it was about right after one o'clock.

Q. Whereabouts?

A. At my home.

Q. Who all were present?

A. Well, Joe and I were sitting on the front porch, and the family was in the house.

Q. Will you tell us to the best of your recollection what the conversation was?

A. Well, it seems as though Joe wanted to put over a company union, and he tried to get me to go along with him and drop the other organization.

Q. What do you mean by "other organization"?

A. The Union.

Q. Local, 242?

A. That is right. He said he knew what the Union was, that he belonged to it himself, carried a card in it at one time, said the treasurer had run off with the money. He didn't say who the treasurer was. I didn't take it for granted that he was the treasurer. I am just kind of getting smart. And he set that up as an example of what could happen, you know. And he had a petition, he didn't show it



to me, it wasn't a petition, it was getting signers for his company union. We argued back and forth there until after 4 o'clock, and I told him that I wouldn't, couldn't let these boys down, that I had got into it, and I was in to stay, and I would be a very small man if I turned them down at the present time, and I refused to sign it, and he didn't even show it to me.

Q. Did anything else occur during the conversation?

A. Well, there was a lot of things that occurred, but it is hard to remember all of them.

Q. Do you recall the time that Ernest Jones and Dinty Moore were ordered to Hobbs, New Mexico?

A. Yes, sir, I do.

Q. There was testimony here on the part of Mr. Shipp that in the absence of Mr. Jones you attended a conference on April 29, 1936 with the Workmen's Committee.

A. I did.

Q. Called on the management, is that correct?

[fol. 457] A. That's right.

Q. Did you hear Mr. Shipp's testimony on that?

A. No.

Q. How did you come to go to that meeting?

A. Mr. Jones was absent, and I was asked to fill in in his place.

Q. Who asked you to fill in?

A. The members of the Local.

Q. And you did fill in?

A. I did.

Q. And Mr. Shipp testified that the purpose of the meeting was to see what could be done about the transfer of these two men, is that correct?

A. That is right.

Q. What position did the Union take in that meeting, on that matter?

A. Well, we went up there to protest the transfer of Jones. When I went there I didn't know that Moore had been transferred. I asked him in the office if he had got a transfer, I took it for granted from what was going on that he had, and he said he had got a transfer, but he just couldn't take it, and that was the first news I had that Moore was transferred.

Q. And was that the purpose of the meeting, to see about these transfers?

A. It was.

Q. Mr. Shipp testified that during the progress of this meeting you asked the company officials, being Mr. Thomas and Mr. Bartels, if there was any truth to the rumor that the field was going on a 48 hour week, is that correct?

A. I did.

Q. Is that the first time you had heard about that?

A. That is the first rumor I had heard that we were going on 48 hours, that was in the meeting, and I asked Mr. Thomas if that was a fact, that we were going on 48 hours the first of the month, and he says, "Yes", and I says, "I hate like Hell to think about going to work 48 hours a week here.

Q. As an employee of the plant, not as one of the Workmen's Committee, but as an employee of the field that is, when did you first learn that you were to go on a 48 hour week?

A. I learned it that day, April 27.

[fol. 458] Q. You learned that in the meeting with the management?

A. Yes.

Q. If you had not been on the Workmen's Committee, just an ordinary worker there in the field, a member of the Local, not on the Workmen's Committee, when would you have heard about that 48 hour change?

A. The last day of June.

Q. The last day of April you mean?

A. The last day of April.

Q. In other words, the 30th of April, is that what you mean?

A. Yes, sir.

Q. How was that notice given to the employees?

A. Well, I don't know, if I am not mistaken I think Bartels came down and told me.

Q. Came down and told you on the 30th day of April that you were to go to work the next day on a 48 hour basis?

A. I think that is right.

Q. But you say you had known about it through the meeting anyway?

A. Yes.

Q. Have you ever seen any notice published to that effect?

A. Never did.

Q. Now, on the 30th of April, the 30th of April was on Sunday, wasn't it?

A. I couldn't say.

Q. Now, you went on the 48 hour week on the first of May, and there is some statement here about your wages increasing, is that correct?

A. That is right.

Q. Now, as a pumper, how much were you making a month before you went on the 48 hour week?

A. \$117.50.

Q. How much did you make after the 48 hour week went in?

A. \$130.00.

Q. Now, I believe the roustabouts were making \$112.50, is that correct?

A. That's right.

[fol. 459] Q. And they were raised to \$125.00?

A. That is right.

Q. In other words, you got \$12.50 more a week, is that correct?

A. No, we got \$12.50 more a month.

Q. A month, excuse me. \$12.50 more a month, is that right?

A. That is right.

Q. For that \$12.50 you worked approximately 4 times 12 hours a week, 48 hours a month?

A. A month, longer, yes, sir.

Q. Do you know what it amounted to a month, to be exact?

A. The increase?

Q. No, the number of hours a month worked in a 48 hour week.

A. No, there would be the 4 weeks, and then a couple of extra days, it would vary in a 30 and a 31 day month.

Q. It would run you about 50 extra hours a month, would it?

A. Yes.

Q. For that you got \$12.50?

A. That is right.

Q. Do you know what that means an hour?

A. No, not exactly.

Q. About 24¢ an hour, isn't it?

A. Somewhere thereabouts.

Q. And what were you making before on the 36 hour week?



A. Why, I think it figured up to 70¢, I believe 71¢, I don't know.

Q. How long did you remain on the 48 hour week?

A. If I remember correctly, about the first of September, from May to September. I could be mistaken about that. That is about as near as I can remember.

Q. Now, how much are you making now as a pumper?

A. \$140.00.

Q. Are the roustabouts still \$5.00 behind you in pay rate?

A. I think so.

Q. They are making about \$135.00, is that correct?

A. I think so.

[fols. 460-957] Q. When was that last increase given to you?

A. Well, I really don't know, I really don't know just the date when it was put into effect.

Q. Shortly after Jones and Moore were transferred, did you have a conversation with Mr. Bartels at the hoiler house?

A. I did.

Q. About what date was it, to the best of your recollection?

A. Well, I think it was a couple of weeks or three weeks after the transfer.

Q. And what time of day was the conversation?

A. Oh, I think it was in the afternoon.

Q. Anybody else present beside you and Mr. Bartels?

A. No.

Q. Will you give us the conversation, to the best of your recollection?

A. Bartels came down and asked me what the Union was going to do about those transfers. I told him I didn't know, that the Union conducted their own policy, that I didn't furnish any brains for them at all, whatever they decided on was what they would do, and he said, "Well, its going to cost me my job", and he turned around and walked out.

Q. Did you ever talk to him again about that matter?

A. No.

[fol. 958] ERNEST JONES, a witness, recalled by and on behalf of the National Labor Relations Board, having previously been sworn, was further examined and testified as follows:

Direct examination:

Mr. Shaw: I am recalling Mr. Jones, for further testimony, requested both by myself and counsel for the respondent.

Trial Examiner Holden: Proceed.

Mr. Shaw: Mr. Examiner, may we also understand that the witness has been on the stand before in this proceeding and has been under oath and is now?

Trial Examiner Holden: Yes.

By Mr. Shaw:

Q. Now, Mr. Jones, the last day of your testimony you told the examiner that you would return with a compilation, to the best of your ability, of your earnings and wages received since April 27, 1936. Have you made such a compilation?

A. I have.

Q. Will you tell us what your earnings and wages have consisted of since that time, and the sources from which they were received?

A. I can read it off here.

Q. All right. Do that.

A. The sources from which they were received are from my bookkeeping systems, one of them starting in the 1st of 1937—January 1. We started on the Beck-Nor bookkeeping system, and those books may be examined by anybody at any time.

Starting in May, to December, 1936, all goods sold—

Q. Is that your grocery store, now?

A. That is the grocery store, yes. All goods sold amounts to \$5,754.96.

Mr. Akolt: What period is that?

A. Starting May—I took the store over May 15. That's just written "May" here. It runs to December, 1936.

Mr. Shaw: That is, up to January 1, 1937?

A. Up to January, 1937.

[fol. 959] Trial Examiner Holden: Is there any objection to stating net figures on this?

Mr. Akolt: Yes. Both gross and net we object to as not being the proper way to get at it.

The Witness: My total expense—

Trial Examiner Holden: Just a minute. Is their any objection to the present testimony?

Mr. Akolt: Yes. He stated that he had books from January 1, 1937. I don't know what the basis of this testimony up to January 1, 1937, is going to be.

Trial Examiner Holden: May that be shown, please?

By Mr. Shaw:

Q. Well, I will ask what the basis of compilation on this particular date is.

Mr. Akolt: We will make a further objection, general objection, to all this line of testimony, that it is not contemplated by any law, and entirely improper to consider at all the earnings of a man who has gone in business in connection with any reinstatement claim.

Wages and such things as that may be considered, but not any gain or loss that comes from a business. When a man goes into business, he takes business chances.

Trial Examiner Holden: The objection on that ground is overruled.

Mr. Shaw: May we go off the record?

Trial Examiner Holden: Off the record.

(Discussion off the record.)

On the record.

Please proceed. May the record show from where these figures were taken?

Mr. Shaw: Yes.

By Mr. Shaw:

Q. Where are these figures taken from that you are offering now, Mr. Jones?

A. They are taken from our books, from the date that we took the store over, both daily records and monthly records, and from what we based our yearly income on.

Q. Did you make the compilation yourself?

[fol. 960] A. My wife and I together made that.

You see, to explain this: every day in the compilation of the sales that are made, we have to write down every article we sell in the store, and on the same day we take down



every bill that we pay out, and those daily records have to be kept up to date to the end of the month in order to compute your sales tax, for one reason. That's where the records come from.

Q. Proceed. Go ahead.

A. The total expense was \$5,609.87, leaving a total of \$145.09 for that period, minus \$25.57 in 1936 tax, leaving a total of \$119.52.

Q. Mr. Jones, what items are included in your expense for 1936?

A. All items pertaining to the store. There's no personal expense whatsoever. We pay our expenses in the store the same as any customer. Our grocery bill is kept by the month on the charge account at the prices at that store, and no clothes or any personal expenses whatsoever is taken from or added to this store account.

Trial Examiner Holden: Off the record.

(Discussion off the record.)

On the record.

By Mr. Shaw:

Q. First of all, I want to go back on the record and ask a question.

Mr. Akolt: The respondent moves that the detailed figures and get results given by Mr. Jones be stricken, unless the full computation is going to be permitted.

Trial Examiner Holden: Physically stricken?

Mr. Akolt: Yes.

Mr. Shaw: I will join in the request. There is no use to having only a half-picture of the situation here.

Trial Examiner Holden: The motion is granted.

By Mr. Shaw:

Q. Mr. Jones, have you received any earnings, wages or profits from any source since the date of April 27, 1937, up to and including the present date, from any other source than your store and postoffice in Parkerton, Wyo.?

A. No, I have not.

[fol. 961] Q. Not a cent from any other source?

A. Not any earnings or profits, or anything like that.

Q. What do you mean?

A. I have had other money—borrowed money—and I had money out on loans that I called in.

Q. Well, you have made some statement here sometime ago that you did some trapping.

A. I did some trapping.

Q. Did you make any money out of that?

A. I didn't make any money out of that; any more than pay expenses.

Q. Well, does that mean since April 27, 1936?

A. That does.

Q. You haven't any more than paid expenses out of trapping since that time?

A. I have not.

Mr. Akolt: That is a source that should be included if we are eventually going to go into all this thing.

Trial Examiner Holden: Does the record show whether or not he engaged in trapping before his discharge?

The Witness: I did.

By Mr. Shaw:

Q. I suppose you mean you engaged only in it part time on your off days?

A. I might on off days, yes.

Q. And all the rest of your moneys and profits came from the operation of your store and the postoffice?

A. They did.

Trial Examiner Holden: Off the record.

(Discussion off the record.)

On the record.

Mr. Shaw: Mr. Examiner, the evidence shows that the earnings of the witness Jones, if any, have resulted from the operation by himself of a general store and postoffice in the town of Parkerton, Wyo.

The witness has testified that this is his sole source of earnings. There may be the added element of cost accounting involved in trapping. At any rate, I think that this [fol. 962] hearing is no place for us to go into involved matters connected with cost accounting, showing profits and losses in the grocery and postoffice business. The matter would be lengthy, and, I think, improper.

I am, therefore, not at this time introducing any evidence concerning the earnings of this witness from April 27, 1936, up to the present time; and I shall ask the Board to hold such matters relating to Jones' earnings until such time as it becomes necessary to make actual restitution in the form of back wages in case the National Labor Relations Board may enter an order reinstating this man to his former position in the respondent with back pay.

Trial Examiner Holden: Since reference has been made to trapping, may the record show the approximate extent to which the witness has engaged in trapping prior to his discharge and subsequent to his discharge.

By Mr. Shaw:

Q. Tell us about the coyotes, Mr. Jones.

A. Well, most of it is beaver. We had a permit. Anytime that I ever made any money, much more than expenses, was on beaver. As far as the money proposition is concerned, we had a beaver permit. There was 2 of us involved, up on what they call the Mountain Home place, situated on Deer Creek.

By Trial Examiner Holden:

Q. When was this, please?

A. That was in the spring of 1936. Most of the trapping at that time was done up until the time—in the month I left the employment of the Continental Oil Company, and including, I believe, 7 days; the time that I had off that I went up there.

By Mr. Shaw:

Q. How many months out of the year do you trap?

A. We usually start trapping about the middle of November and trap until, oh, sometimes the middle or the latter part of April. The 1st of May all trapping permits are voided for the year.

Q. Have you carried on the practice since April 27, 1937, to the same extent you did prior to that time?

A. No.

Trial Examiner Holden: '36, isn't it?

Mr. Shaw: 1936, rather.

A. That was the last trapping that I did at beaver at all. We made most of our money on beaver pelts at that time.



[fols. 963-972] Q. Where have you been trapping since that time?

A. Well, we've been trapping Macon coyotes, and I have caught a couple of bobcats, just by accident, I guess. Your car expense will run around 10 cents a mile, and you will have to cover plenty of miles. I do this as much for a hobby as anything else.

Cross-examination.

By Mr. Akolt:

Q. I was wondering, Mr. Jones, when you first started this trapping business?

A. Oh, I have trapped off and on since I was a kid, 12 or 13 years old.

Q. You said something about in the spring of 1936.

A. Well, we trapped before then. That was one time that we really did good trapping, was during that month or during that time, on account of that beaver permit. You can't get a beaver permit any more.

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[fols. 973-1065] R. S. SHANNON, a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Akolt:

Q. You will please state your name?

A. R. S. Shannon.

Q. Where do you live, Mr. Shannon?

A. In Denver, Colorado.

Q. Are you employed by the Continental Oil Company?

A. I am.

Q. In what capacity?

A. I am the general superintendent of the Rocky Mountain division of the production division of the company, and have supervision over drilling, production, gasoline plants, pipelines, telephone and telegraph operations, in the Rocky Mountain division.

• • • • •

[fol. 1066] By Mr. Akolt:

Q. Mr. Shannon, I will now read to you paragraph 19, 20 and 21 of the amended complaint, filed in 22-C-4—The reporter will not need to take this in the record.

(Paragraph 19, 20 and 21 read by counsel.)

I believe you have probably read that complaint and those allegations before, have you not?

A. Yes, sir.

Q. Were there employees in the Big Muddy field by the name of Ernest Jones and D. F. Moore?

A. Yes.

Q. Are these 2 men at the present time employed by the company?

A. No.

Q. Will you state the circumstances, insofar as you know them, leading up to the termination of their employment?

A. Well now, we are talking about 1936; and in the very first part of 1936, Mr. Dyer and myself—Mr. Dyer, the [fol. 1067] manager of the production in the territory east of the Rocky Mountains, began a study of putting the operations in the Rocky Mountain division on a 48-hour working schedule.

This matter, after being studied and considered, we began to put it progressively into effect in the Wyoming district, commencing in the Lance Creek field, on, I believe, February 1, 1936, and following in Salt Creek and Big Muddy fields.

Q. When in Salt Creek? March when?

A. March 1. Let's see. March 1 or April 1. April 1 is correct.

Q. April 1?

A. Yes. It was my understanding with Mr. Dyer, and that understanding was later confirmed in written instructions, that in going on this 48-hour basis, no man would be laid off except any—with the exception, if any, of merely temporary men; who were just on in some field for some special small job as temporary laborers or roustabouts; that no permanent men were to be laid off.

In line with those instructions, we started with the Lance Creek field, for the reason that the Lance Creek field was then entering into a further period of expansion, and the sand had been uncovered and the work was increasing.

As we come to each payroll, each field to be considered, the number of employees in each classification in each field were studied, and the men in the field, the foremen, district superintendent, were requested to prepare recommendations for the necessary transfers and shifting of men to accomplish the installation of the new schedule without laying off any regular employees.

Q. Let me interrupt you there. Why was it necessary to consider the question of either laying off men or transferring them in connection with the shifting to the 48-hour week?

A. Well, we were increasing the working week from the 36-hour week to the 48-hour week.

Q. I gather that. Why did that require less men?

A. Well, for the reason that each man worked longer each week under the 48 hours. Therefore, not as many men were required to do the same given amount of work.

Q. That is what I am getting at. There was the same given amount of work to be done by the men?

[fol. 1068] A. Yes.

Q. If they worked 48 hours a week, it took less men to do the work?

A. That's right.

Q. Anything in addition to this 48-hour a week program, was there a change applicable to Big Muddy about that time with reference to installation of central powers?

A. Yes.

Q. Explain what that was.

A. Well, commencing in 1929, we had been carrying on a campaign in both Salt Creek and Big Muddy, and especially in Big Muddy, of installing central powers for pumping the wells, eliminating the pumping of wells with individual derricks, and a gas engine at each location by putting in the central powers, putting jacks at the band and band-wheel power, and operating a large group of wells from one central power plant.

Q. How would that affect the number of men necessary to be employed in the field?

A. Well, probably the quickest way to answer that would be to say that where a group of wells is being handled by a group of pumpers, consisting of 15 individuals pumping wells, each powered with a gas engine, and this group of wells was connected with one central power, with only 1 gas engine operating that power, the work to be done



in operating that group of wells was reduced to—well, 60 or 75 percent.

Q. That required less men in the field to take care of the work that had to be done?

A. Yes, sir.

Q. So you had that double proposition in the Big Muddy?

A. Yes.

Q. Both the increase of the hours, and the installation of these central powers?

A. Yes.

Q. Now, what did that develop into, as to the reduction of the working force in the field?

A. Well, we found that on putting the 48-hour schedule into effect that it would necessitate the transfer of 4 men, and the district superintendent and production foreman were requested to make their recommendations for the transfers that were to be considered.

[fol. 1069] Q. Now, about what time of the year 1936 did you make this request upon the district superintendent and the production foreman?

A. The request for definite recommendations, I believe, at Big Muddy were about around the 1st of April.

Q. The district superintendent was Mr. Thomas, that has been referred to?

A. Yes, sir.

Q. And the production foreman was Mr. Bartels?

A. Yes.

Q. Now, state what you told Mr. Bartels and Mr. Thomas to do with reference to selecting men to be transferred.

A. I told them to check over their personnel of their organization to make recommendation for the setup of their organization on the reduced number of men, and give consideration to all the factors involved and their responsibility in connection with the operation of the district and the field.

Q. Did I understand you to state that the company, through Mr. Dyer, had announced the policy that, if possible, no men were to be laid off because of the change in hours?

A. Yes.

Q. They were to arrange transfers?

A. Yes.

Q. You say that was along about April 1, when you gave Mr. Thomas and Mr. Bartels this notice?

A. Yes, sir. It was in the early part of April.

Q. Did they make a recommendation to you?

A. Yes, they did.

Q. At about what time?

A. Around the 3d or 4th of April.

Q. And who did they recommend that would constitute the 4 men who were required to be transferred on account of the reduction in force?

A. Well, to begin with, it was Moore, Jones, Whitlock and Jackson, I believe.

Q. You say that is what it was at first?

A. Yes.

Q. Did it end with that, or was there a change in their recommendation?

A. There was a change in the recommendation of the [fol. 1070] district superintendent. After studying the situation further, in the light of the situation at Salt Creek, Mr. Whitlock was not transferred.

Q. And was there someone substituted for transfer instead of Mr. Whitlock?

A. Yes.

Q. Who was that?

A. Canning, I believe, if I remember right.

Q. So, if I understand you correctly, pursuant to the request of Thomas and Bartels, they recommended finally Moore, Jones, Canning and Jackson to be the 4 to be removed; is that right?

A. Yes; I think that is correct.

Mr. Shaw: Off the record.

Trial Examiner Holden: Off the record.

(Discussion off the record.)

On the record.

By Mr. Akolt:

Q. These recommendations that you are speaking of, made to you by Mr. Thomas and Mr. Bartels, were they oral or in writing?

A. They were all oral, as I recall it. Yes, all oral.

Q. Was there a place for 4 men in Salt Creek to be transferred?

A. No.

Q. Was it necessary to transfer some to places other than the State of Wyoming?

A. Yes.

Q. Did you attempt to find a place in the Continental organization where Mr. Jones and Mr. Moore could be transferred to?

A. Yes. I took it up with Mr. Dyer at once afterwards.

Q. Did you have a series of communications, consisting of letters and telegrams, with Mr. Dyer?

A. Yes.

Q. With reference to the transfers of Moore and Jones?

A. Yes.

Q. And did you have some correspondence or telegrams with a man named H. B. Simcox, with reference to the transfer of Jones and Moore?

[fol. 1071] A. Yes. Mr. Simcox is the general superintendent of the Texas—the North Texas division and New Mexico.

Q. Of the Continental Oil Company?

A. Yes, sir.

Q. So he holds a similar position in the North Texas and New Mexico division that you hold in the Rocky Mountain division?

A. Yes.

Q. Mr. Shannon, I have had marked by the reporter as exhibits copies or purported copies of letters and telegrams, identified as respondent's exhibit 14a to 14gg, both inclusive.

(Thereupon the documents above referred to were marked as Board's Exhibits 14a to 14gg, incl., for identification.)

Q. I will ask you if those exhibits are copies of letters and telegrams between yourself and Mr. Dyer and Mr. Simcox, that you have now just generally referred to?

A. Yes, they are.

Q. You went over these with the originals with me last night, did you not?

A. Yes, sir.

Q. Mr. Shannon, do you have with you here in the hearing-room the originals of the letters and the originals of the telegrams, of which this exhibit 14a to 14gg, both inclusive, is a copy?

A. Well, to the extent that 1 or 2 of them did not originate in my office. I don't have those.

Q. You have Mr. Dyer's originals, too, haven't you, right there?

A. Yes.



Q. So in your files right now you have not only the originals of the letters that Mr. Dyer wrote you, but the originals of the letters that you wrote Mr. Dyer, haven't you?

A. Yes, sir.

Mr. Akolt: I would like to state for the record that I have now in my hand the originals of the instruments from which the exhibits 14a to 14gg were copied. The company would like to retain the originals, and we are offering these originals now for verification; or, if the examiner or Mr. Shaw should insist, we will actually introduce the originals and save the copies ourselves.

[fol. 1072] Mr. Shaw: I am not going to insist upon the introduction of the originals. I think the copies themselves are sufficient. I should, however, like the opportunity of checking the originals against the copies, and, with that privilege, I do not care to have the originals introduced.

Mr. Akolt: Then it is understood that the originals are available for verification by you, Mr. Shaw.

Mr. Shaw: Thank you.

Mr. Akolt: Mr. Shannon, you will see that he gets that chance, won't you?

The Witness: All right.

(The documents heretofore marked "Board's Exhibit 14a to 14gg," incl., for identification, were received in evidence.)

By Mr. Akolt:

Q. Mr. Shannon, you have stated that after you receive the recommendations as to the men to be transferred, that you took the matter up with Mr. Dyer?

A. Yes.

Q. Will you refer to your files and state when you first took the matter up with Mr. Dyer?

A. On April 3, 1936.

Q. I show you respondent's exhibit 14a, and ask you if that is a copy of your letter of April 3, 1936, to Mr. Dyer?

A. Yes, it is.

Mr. Akolt: So these will be intelligent to you, there being so many of them, I think, with permission of counsel, I will read these as I go along, so we will know what we are talking about.

Mr. Shaw: Will you read the whole letter, do you mean?

Mr. Akolt: Yes.

Mr. Shaw: I suggest they not be read into the record.

Mr. Akolt: No. Just so I read the letter.

Trial Examiner Holden: Off the record.

(Discussion off the record.)

On the record.

Mr. Akolt: The respondent now offers in evidence the fol-  
[fol. 1073] lowing exhibits, which I think I better identify  
by the date of the letter and from whom and to whom, for  
the record:

Respondent's exhibit 14a, letter of April 3, 1936, Shannon  
to Dyer.

Respondent's exhibit 14b, copy of the employment and  
change form of the Continental Oil Company covering  
Frank D. Moore, on the back of which is payroll history.

Respondent's exhibit 14c and 14d, a 2-page letter, April  
10, 1936, Dyer to Shannon.

Respondent's exhibit 14e and 14f, a 2-page letter exhibit,  
April 11, 1936, Dyer to Simcox.

Respondent's exhibit 14g, April 14, 1936, letter, Simcox  
to Shannon.

Respondent's exhibit 14h, April 18, 1936, letter, Shannon  
to Simcox.

Respondent's exhibit 14i, personal record of Frank D.  
Moore.

Respondent's exhibit 14j, personal record of Ernest  
Jones.

Respondent's exhibit 14k and l, a 2-page letter, April 23,  
1936, Simcox to Shannon.

Respondent's exhibit 14m, telegram, April 27, 1936, Shan-  
non to Simcox.

Respondent's exhibit 14n, April 27, 1936, telegram, Sim-  
cox to Shannon.

Respondent's exhibit 14o, telegram, April 28, 1936, Sim-  
cox to Shannon.

Respondent's exhibit 14p, telegram, April 29, 1936, Shan-  
non to Dyer.

Respondent's exhibit 14q, telegram, April 27, 1936, Sim-  
cox to Dyer.

Respondent's exhibit 14r, telegram, April 29, 1936, Dyer  
to Shannon.

Respondent's exhibit 14s, telegram, May 1, 1936, Thomas  
to Shannon.

Respondent's exhibit 14t, telegram, May 1, 1936, R. Plaster to Shannon.

[fol. 1074] Q. Who is R. Plaster, Mr. Shannon?

A. My secretary, in Denver.

Q. Proceed.

A. Respondent's exhibit 14u, telegram, May 4, 1936, Shannon to Simcox.

Respondent's exhibit 14v and 14w, 2-page letter, May 5, 1936, Shannon to Frank D. Moore.

Respondent's exhibit 14x and 14y, 2-page letter, May 4, 1936, Shannon to Thomas.

Respondent's exhibit 14z, letter of May 4, 1936, Shannon to Thomas.

Respondent's exhibit 14aa and 14bb, 2-page letter, May 5, 1936, Shannon to Moore.

Respondent's exhibit 14cc, letter, May 15, 1936, Shannon to Dyer.

Respondent's exhibit 14dd, letter, May 20, 1936, Shannon to Frank D. Moore.

Respondent's exhibit 14ee, letter, May 20, 1936, Shannon to Thomas.

Respondent's exhibit 14ff, letter, May 22, 1936, Shannon to Thomas.

Respondent's exhibit 14gg, letter, May 22, 1936, Thomas to Shannon.

Mr. Shaw: I think we better take the opportunity at this time to check over the copies with the originals.

Trial Examiner Holden: There will be a 5-minute recess at this time.

(Thereupon a 5-minute recess was taken.)

After Recess

(Whereupon, the hearing was resumed, pursuant to recess, at 3 p. m.)

Trial Examiner Holden: The hearing is in session.

Mr. Shaw: Mr. Examiner, I have been furnished with the originals of the documents referred and identified here as respondent's exhibit 14a to 14gg, inclusive, and I have had [fol. 1075] the opportunity of checking those originals, and find that the copies submitted in evidence are accurate copies thereof.



Therefore, I have no objection to their introduction into evidence.

Trial Examiner Holden: The offer is received.

(The documents heretofore marked "Respondent's Exhibits 14a to 14gg" for identification, were received in evidence.)

Trial Examiner Holden: Off the record.

(Discussion off the record.)

On the record.

By Mr. Akolt:

Q. Mr. Shannon, referring again to the exhibits 14a to 14gg, was each of these letters among those exhibits mailed at the time the letter is dated as appears in these exhibits?

A. Yes, sir.

Q. And the same is true with the telegrams, is it; they were sent on the dates that appear in the exhibits?

A. Yes.

Q. And both telegrams and letters were sent to the parties to whom they are addressed, as shown by the exhibits?

A. Yes.

Trial Examiner Holden: Off the record.

(Discussion off the record.)

On the record.

By Mr. Akolt:

Q. Do you know whether the letters from you, addressed to Mr. Moore, were mailed by you to Mr. Moore, or were they not mailed by you to Mr. Thomas for delivery to Mr. Moore?

A. They were mailed as enclosures to Mr. Thomas.

Q. To Mr. Thomas?

A. Yes.

Q. So, to that extent, you did not actually mail the letters to Mr. Moore?

A. No.

Q. Of your own personal knowledge, do you know whether [fol. 1076] Mr. Moore received the letters which you addressed to him and sent to Mr. Thomas for delivery?

A. As to my own personal knowledge?

Q. Yes.

A. No.

Q. You never talked to Mr. Moore about them?

A. No.

Q. So your knowledge is based upon Mr. Thomas' letters, reporting what he had done with the letters?

A. Yes.

Q. Mr. Shannon, did you give any special instructions to Mr. Thomas and Mr. Bartels, or either of them, as to who they should pick out for transfer, at the time that you told them to give you the names of the 4 men that they would recommend for transfer?

A. No.

Q. Did you approve the recommendation of the 4 men as given you by Mr. Thomas and Mr. Bartels?

A. Yes.

Q. And you let Mr. Dyer know in his correspondence that you did so approve, did you not?

A. Yes.

Q. Did you know personally Mr. Moore, Mr. Jones and these other men?

A. Yes.

Q. How long have you been acquainted with the Big Muddy field?

A. Well, the Big Muddy field has been under my supervision as general superintendent of the Rocky Mountain division since 1929.

Q. In the performance of your duties as such superintendent, did you have occasion from time to time to go upon the different tracts of lands or leases in the Big Muddy field and observe the work being done by the men working in the field for the company?

A. Yes, I did.

Q. In the course of that number of years had you become familiar to a greater or less extent with the character of the work being performed by the different men working for the company and as to their relative efficiency?

[fol. 1077] A. Yes. I had a general working knowledge of the various men in our organization, and the condition of the properties on which they were working, from inspections and visits to the properties.

Q. Did any reason occur to you why you should not approve the transfer of the 4 men recommended for transfer

by Thomas and Bartels, which 4 men included Moore and Jones?

A. No, there did not.

Q. Did you have a view of your own as to their efficiency, from the standpoint of going out and inspecting their work, in comparison to the other men in the field?

A. I had general knowledge of the qualifications and character of work done by these men through reports and discussions with the superintendent and the foreman.

Q. And from your own inspections and your own personal knowledge, and the reports that have been made to you by the district superintendent and the field foreman, what was your opinion as to the comparative efficiency of, say, Moore and Jones with the rest of the men working in the field?

A. Well, Moore had been a cable tool man for a great many years, and it had been reported to me on a number of occasions that he was not very satisfactory as a roustabout. Very few men who have been in cable tool work for any length of time work out to be very efficient roustabout men.

Q. Will you explain what you mean by a cable tool man?

A. I mean men who have worked on cable drilling outfits, as driller or tool dressers, and which is a separate branch of the business; and the men in that work receive higher wages considerably than men working in the general field work.

It was work that was subject at one time to a big volume, but it died down, and then there was a lot of new work, where they were working under different conditions than the ordinary operating force going along operating the property day by day.

Q. You stated that Mr. Moore had had experience at some time working on this cable tool work?

A. Yes, sir.

Q. Now, was there any cable tool work in the last number of years, before he was terminated, in the Big Muddy field?

A. No; there had not been.

[fol. 1078] Q. And elsewhere in Wyoming where the Continental was operating, was it doing its own drilling then?

A. No. It was contracting its drilling work.

Q. So did the Continental, either in Big Muddy, Salt Creek or Lance Creek field in Wyoming, have any cable tool work for Moore?

A. Not at that time, no.



Q. How did Moore compare in age with the other men working for the company at that time?

A. Well, he was in his 50's, and that's getting pretty well along for roustabout work; especially where a man has experience in other lines.

Q. Now, let me repeat again: Compared to the other roustabouts in the field, how did Mr. Moore compare in efficiency to perform the work which a roustabout should perform in that field?

A. Based on the reports from the men, and the supervisors in the field and district, in whom I had confidence, he was not considered a specially good roustabout.

Q. Now, there was cable tool work to be done, was there not, in the Hobbs field in New Mexico, the field where he was transferred?

A. Yes. They were doing clean-out work with cable tools.

Q. And from the exhibits which you have identified, that is, numbered 14a to 14gg, it was under that character of work which you proposed to transfer him to the New Mexico field?

A. Yes.

Q. What pay or wage was Mr. Moore receiving as a roustabout in the Big Muddy field?

A. \$112.50 a month.

Q. What pay would he have secured if he had accepted this transfer to the Hobbs field?

A. 70 cents an hour.

Q. Which would make a total of how much a month, computed on the monthly basis?

A. \$145.60.

Q. \$145.60, as against \$112.50?

A. Yes.

Q. Was it reported to you after you had approved this transfer and secured the approval of Mr. Dyer, that Mr. Moore's wife was ill?

[fol. 1079] A. Yes.

Q. Did Mr. Thomas or Mr. Bartels verify that and so report to you?

A. Yes.

Q. What did you do then when you found that out?

A. Why, I wrote Mr. Moore a letter and sent it up to District Superintendent Thomas, and told them that in view of the circumstances in his family that we would continue his employment at Big Muddy.

Q. Before you wrote that letter, however, did you not offer him a transfer to the Wellington field near Fort Collins, Colorado?

A. Yes.

Q. Did you do that personally, or was that done through Thomas and Bartels?

A. That was done through Thomas and Bartels.

Q. And then was it reported to you that Mr. Moore would not accept their transfer?

A. Yes.

Q. Then what did you do?

A. I wrote him a letter and sent it up to Mr. Thomas to present to him that we would continue his employment at Big Muddy and that he must elect to go back to work or let us know.

Q. Those letters you are speaking of are May 5, 1936, 14aa and 14bb, and your letter of May 20, 1936, to Mr. Moore, 14dd; is that correct?

A. Yes, sir.

Q. Was it reported to you that Mr. Moore had refused to come back?

A. Yes.

Q. And what did you do then?

A. I proceeded to close the file and considered the matter closed, as far as I was concerned.

Q. Notice in your letter of May 22, 1936, to Mr. Thomas, respondent's exhibit 14ff, in which you state as follows:

I am going to read the whole letter, so it need not be taken in the record.

(Letter read by counsel.)

What is the E. and C. form?

[fol. 1080] A. The employment and change form, that covers any transfer, or change in rates.

Q. One of those forms filled out is among these exhibits as 14b, is it?

A. Yes.

Q. Your letter continues, in the next paragraph—

(Letter read by counsel.)

Q. What do you mean by that one week's termination allowance?

A. Well, we had a ruling which dated back to the commencement of the NRA rates that we have, that whenever an

employee was terminated in his employment on account of a reduction in the force, he was given a week's additional allowance in pay at the time of the termination.

Q. Mr. Shannon, I hand you a 2 page document, marked respondent's exhibit 15a and 15b, and I will ask you if that is the rule of the company that you referred to with reference to this weekly allowance in the case of a termination on account of reduction in force?

(Thereupon the documents above referred to were marked as Respondent's Exhibit Nos. 15a and 15b for identification.)

A. Yes.

Q. This paragraph 2 of that document is the rule, is it?

A. Yes.

Q. And that paragraph 2 reads—

(Paragraph 2 read by counsel.)

Mr. Akolt: We offer in evidence respondent's exhibits 15a and 15b.

Mr. Shaw: No objection.

Trial Examiner Holden: The offer is received.

(The document heretofore marked "Respondent's Exhibit No. 15a and 15b" for identification, was received in evidence.)

By Mr. Akolt:

Q. Mr. Moore, while he was on the witness-stand, testified that some time after he quit the company that he received a check from the company, and that he didn't know what it was about. Was that a check that was mailed him on this week's termination allowance on account of the reduction in force under this rule?

[fol. 1081] A. Yes.

Q. Mr. Ernest Jones, when on the witness-stand, identified an envelope which is marked as Board's exhibit 59a, in which he said there was a check received after his termination that he did not know what it was about. Was that a similar check under this one week's allowance rule?

A. Yes.

Q. Now, we have been talking concerning Mr. Moore. Do you know Mr. Ernest Jones?

A. Yes.



Q. How long had you known him?

A. Well, I had known him as a pumper there in the field and an employe commencing at the time I had taken over active supervision in the Big Muddy field, about 1929.

Q. What was his working ability or efficiency compared to others in the field?

A. Well, his work had been criticised by the foreman and the district superintendent to me on a number of occasions, when I had raised questions with them about the condition of certain engine house leases and derrick floors, and so forth, in going over the properties.

Q. Now, you said that you had raised questions. Will you be a little more detailed in your explanation as to what you mean by those statements.

A. Well, there are certain standards of operating practice that we require of all our employes to follow in working out their work in the fields and in going over the properties.

If I find that the properties are not being maintained in the condition that they should be, then I immediately raise the question with the foreman, or rather supervisor, who is with me at the time, as to why that condition exists, and then they are called upon to make a report as to why that does exist and as to why the man that is looking after that property is not keeping it up to company standards.

Q. Well now, in line with that policy, the question I intended to ask is this:

What was it that you observed in connection with Mr. Moore's work, or was it reported to you by your foreman or district superintendent in connection with Mr. Jones' work, I mean, from time to time?

A. Well, principally a lack of friendliness around the engine houses in clean condition.

The water station, in which he was at one time the water pumper, and which I found not to be in good condition, he was reported to be partly responsible for that for the reason that it was not clean.

Q. Well, how did you consider Mr. Jones, on a comparative basis, with the other men with whom he was working in the field, as to his efficiency in getting out the work that should have been done?

A. Well, I did not consider him one of our better pumpers, and rated him that way from years of experience in directing operations.

Q. What salary or wage was Mr. Jones receiving in Big Muddy?

A. \$117.50 per month.

Q. What wage would he have received in Hobbs if he had accepted the transfer?

A. \$120 per month.

Q. What report was made to you as to Mr. Jones' acceptance of the transfer which had been offered to him?

A. Mr. Bartels reported to me that he would not accept the transfer.

Q. And then what happened?

A. Well, nothing happened as far as my action in the matter was concerned, if I understand your question.

Q. Yes. Well, was Mr. Jones informed that he either had to accept the transfer or he was out, or what was said?

A. Yes. He was informed that the transfer stood and we would expect him to go ahead and accept it if he wanted to continue his employment.

Q. Mr. Shannon, are there some employees who seem to have more spells of illness and who seem to have more accidents than other employees?

A. Yes; there is quite a difference.

Q. How does that affect their efficiency or their standing as an employee?

A. Well, if they are involved in accidents, we are immediately concerned about their continued employment due to the hazard to themselves and their workmen, and that situation is borne in mind in considering their status.

[fol. 1083] Q. I hand you a 2 page document, marked respondent's exhibit 16a and b, 16a purporting to be a payroll history of Ernest Jones, and 16b a sickness, death and accident record in connection with Ernest Jones, which I believe that you prepared, did you not?

A. Yes.

(Thereupon the documents above referred to were marked as Respondent's exhibit No. 16a and 16b for identification.)

Q. I note that there are a number of accident and illness periods shown on Mr. Jones' record. Can you state how that compares with the accident and illness records of other employees in Big Muddy at that time?

A. It is quite high.

Q. Now, I refer you to a similar payroll history and sickness and accident record of Mr. Moore, shown on exhibit 17a, b and c, and will ask you how that compares with other employees in the field?

A. That was also quite a bit above the average.

(Thereupon the document above referred to was marked respondent's Exhibit 17a, 17b and 17c for identification.)

Q. I notice on both of these sickness and accident records there is a heading of "State Fund Payments," and then there are certain figures under there as to the amounts paid. What is that "State Fund Payments?"

A. That is the Wyoming workmen's compensation payments.

Q. And under that Wyoming compensation law, the Continental as an employer had to keep on depositing in the workmen's compensation fund a certain amount of money; is that correct?

A. Yes.

Q. And in case of any accidents to its employees, those employees would have to be paid out of that fund, and then the Continental would have to replenish the fund again; is that correct?

A. Yes.

Q. So that in case of accidents the company, through this fund, would have to pay the workmen's compensation; isn't that correct?

A. Yes.

[fol. 1084] Q. Now, I notice in both Mr. Moore's and Mr. Jones' records here that there are several "Number of time lost" items on account of either accidents or illness. And then I notice also there are items showing salary paid during those periods of time lost.

Is it the policy of the company to pay the salaries during the time that the employees were out as a result of illness or accident?

A. Yes, sir.

Q. So that would it be true from that, then, that in the case of a man who had a comparatively large record of time out, either from accident or illness, the company would lose that much of his work?



A. That is correct.

Q. Are those elements taken into consideration in determining the general, all-round efficiency of the employees?

A. That must be one of the factors considered, yes.

Q. Now, Mr. Shannon, you have indicated by your answers that it was the opinion of Mr. Thomas and Mr. Bartels, which was approved by you and Mr. Dyer, that these men should be transferred, and that also indicated that on a comparative basis their efficiency was not as good as other men in the field who were retained; is that correct?

A. Yes.

Q. Well, if that was true, what formed the basis of recommending a transfer and still keeping them on the payroll in the company?

A. Well, in regard to Moore, I hoped from the fact that he would be transferred, to clean out tools and to a work with which he was familiar and had had quite a number of years' experience in, that he would prove to be more competent and satisfactory in that character of work in a new territory.

Q. What about Jones?

A. Well, if a young man coming along in the oil business wants to stay in it, the more general experience he can get and experience in new fields and new activities, why, the better off he is; and I thought that he was going down into a new territory where there was a lot of new work, and that it was a very good opportunity for him.

Q. Do I understand that the Big Muddy field was on the down-grade, and the New Mexico field was a new field and on the upgrade?

[fol. 1085] A. Yes.

Q. Was work decreasing in the Big Muddy and increasing in the Hobbs field?

A. The work in the Big Muddy field is still decreasing, yes.

Q. And at that time it was increasing in the Hobbs field?

A. Yes.

Mr. Shaw: It is 25 minutes to four.

Trial Examiner Holden: We will take a 10 minute recess.

(Thereupon a 10 minute recess was taken.)

## After Recess

(Whereupon the hearing was resumed, pursuant to recess, at 3:45 p: m.)

Trial Examiner Holden: The hearing is in session.

By Mr. Akolt:

Q. In view of the record of Mr. Jones, as you have stated it, Mr. Shannon, I will ask you again: What was the purpose of transferring him to the Hobbs field?

A. What was the question?

(Question read by the reporter.)

A. It was to give him an opportunity to continue in the employment of the company and put him in a new territory where he was to go ahead and establish himself as a competent worker.

Q. State whether or not in that transfer you primarily relied upon the recommendation of Mr. Thomas, the district superintendent, and Mr. Bartels, the field foreman?

A. Yes, I did.

Q. State whether or not you hold Mr. Thomas, as district foreman, and these field foremen under him, responsible for the efficient operation of the fields?

A. Yes, under their direction.

Q. In view of that, do you give primary consideration to the recommendation of the district superintendent and the field foreman as to transfers and discharges?

A. Yes.

Q. Do you know what is sometimes referred to as the seniority rule?

A. Yes, I think so.

[fol. 1086] Q. What consideration do you give that seniority rule, with reference to transfers?

A. Well, I try to give very fair consideration, and, at the same time, weigh the other facts in the cases of transfers that must be considered.

Q. Do you recognize the seniority rule coupled with efficiency or independent of efficiency?

A. What was the question?

(Question read by the reporter.)

A. Well, coupled with efficiency.

Q. Mr. Shannon, Mr. Jones was not highest on the seniority basis even, was he?

A. No.

Q. There were a number of other men in the field who had been there considerably longer than he had?

A. Yes.

Q. And Mr. Moore had been there quite a number of years longer than Mr. Jones, had he not?

A. Yes.

Q. But there were some men in the field who had been there longer than Mr. Moore?

A. That's correct.

Q. Did either Mr. Moore or Mr. Jones have any children that would be involved in any transfer question?

A. Not as it was reported to me, no.

Q. A number of your other employees in the Big Muddy had sizable families, did they not?

A. Yes; quite a few of them.

Q. Were such things as that taken into consideration when it came to a question of transfer?

A. Yes.

Q. Well now, Mr. Shannon, it appears that both Mr. Moore and Mr. Jones were members of the union, local 242. You knew that they were members of the union because they were on the working committee, did you not?

A. Yes.

Q. Well, what consideration in approving these transfers did you give to the fact that they were members of the union, if any?

A. Well, I didn't think that that was more than one factor [fol. 1087] in the situation, and there were other particular employees in the Big Muddy field who were members of the union, so that I didn't see that that was of any particular importance.

Q. Isn't it a fact that on anything that had been exhibited to you as a result of the election in 1934—I believe a notice was served on you in 1935—that you understood that practically all of them in the field were members of the union?

A. They have quite a substantial membership there.

Q. Now, the other men that were transferred—Canning and Jackson: Were they members of the union?

A. I think they were, yes.

Q. Did they make any objection to their transfer?

A. None was reported to me.



Q. Did the fact that Moore and Jones, or either of them, were a member of the union, influence you in any way in approving the recommendation of Bartels and Thomas for their transfer?

A. No, it did not.

Q. Are transfers from one field to another common in the oil industry?

A. Very common, and a natural condition in the oil business, yes.

Q. Now, explain a little more fully why that is a natural condition in the oil business.

A. Well, the development of an oil field consists of an early period of intensive growth and activity, and then when the field has been fully developed there sets in a normal producing or production decline in the field, beginning with the production of oil and gas, which gradually diminishes, and the operations in the field diminish accordingly.

Q. Were there a number of transfers made by the Rocky Mountain division of the Continental Oil Company from one field to another in the year 1936?

A. Yes, sir.

Q. And were there a number of transfers made in your division in the year 1937?

A. Yes.

Mr. Akolt: At this time I offer in evidence respondent's Exhibit 16a and 16b, being the Ernest Jones payroll history and the sickness and accident record.

[fol. 1088] (The documents heretofore marked "Respondent's Exhibit No. 16a and 16b" for identification, was received in evidence.)

Mr. Akolt: I also offer at this time respondent's exhibit 17a, b and c, being the Frank D. Moore payroll history and sickness and accident record.

(The document heretofore marked "Respondent's Exhibit No. 17a, b and c" for identification, was received in evidence.)

Mr. Shaw: I have no objection to respondent's exhibits 16a, 16b, and 17a, 17b and 17c.

Trial Examiner Holden: The offer of these exhibits is received.

By Mr. Akolt:

Q. Mr. Shannon, I hand you a 2-page exhibit, respondent's exhibit 18a and 18b, and ask you if that shows the transfers made in the Rocky Mountain division of the Continental Oil Company from one field to another during the year 1936?

A. Yes, it does.

(Thereupon the document above referred to was marked as respondent's Exhibit 18a and 18b for identification.)

Q. And I hand you respondent's exhibit 19, and ask you if that shows the transfers made in the production department of the Rocky Mountain division of the Continental Oil Company during the year 1937?

A. It does.

(Thereupon the document above referred to was marked as respondent's exhibit 19 for identification.)

Mr. Akolt: We offer in evidence respondent's exhibits 18a, 18b and 19.

Mr. Shaw: I have no objection.

Trial Examiner Holden: The offer is received.

(The documents heretofore marked as respondent's exhibits nos. 18a, 18b and 19 for identification, were received in evidence.)

By Mr. Akolt:

Q. Mr. Shannon, there has been some reference in the testimony offered here by different witnesses as to entrance rates, intermediate rates and ultimate rates. Will you explain the meaning of those relative rates as used in the Continental Oil Company?

A. The *entrance* rate in any classification was the commencement rate paid for the first 6 months of employment in that classification, and the intermediate rate was the next step in that rate for a period of one year, and from that intermediate classification the employe went into the ultimate classification.

At the present time the intermediate classification has been dispensed with, and we have only the entrance and ultimate rates.

Q. Just to apply that to an example or a case, if a man went to work as a roustabout, and say you would pay him \$100 a month for the first 6 months, would that be under the entrance rate?

A. Yes.

Q. And then for the next period you would pay him \$110 a month, and that would be called the intermediate rate?

A. Yes, sir.

Q. And then from that time on he would get, say, paid \$117.50 or whatever the rate was, and you would call that the ultimate rate?

A. Yes.

Q. And now you have just the two rates, the entrance and the ultimate; is that correct?

A. Yes.

Q. Now, also in the testimony, Mr. Shannon, there has been reference to permanent employees. Is there any such thing in the Continental Oil Company as a permanent employee?

A. No. There is no such thing as a permanent employee.

Q. Well, what is the meaning of that term as commonly used by the company?

A. This reference to regular employment is after a man has passed to the ultimate rate, when he becomes a regular employee and is entitled to receive the insurance benefits, and he comes under the health and accident plan and becomes a regular employee.

Q. Then, if I understand you correctly, when you had the three classification of rates, that is, the entrance, intermediate and ultimate, your permanent employees were those on the ultimate rates?

[fols. 1090-1150] A. Yes.

Q. And now, when you have just the two classifications, the entrance and the ultimate, why, a man becomes a permanent employee if he is still on the payroll beyond the period to which he is only getting the entrance rates?

A. Yes.

Q. Now, in the Big Muddy payroll are there any employees other than permanent employees?

A. At the present time?

Q. Yes.

A. No.

Q. Well, were there any other than permanent employees



at the time of the increase to the 48 hour week, when Jones and Moore and these other men were transferred?

A. I believe not.

Q. Now, is there some kind of a distinction made with reference to this expression "permanent employees," between one who is doing a permanent class of work for the company, as against a man who is just simply employed to do some extra job that has come up?

A. What is the question, please?

(Question read by the reporter.)

A. Yes. If a man is employed just for some temporary work, he is classified as a temporary employee. Those that are in the regular organization are termed regular employees.

Q. Those who are doing the regular work in the company as distinguished from some temporary work that has come up?

A. Yes.

Q. They are the regular employees?

A. Yes.

Mr. Akolt: I think that is all, Mr. Shaw.

Cross-examination.

[fol. 1151] Q. Now, as I understand it, Mr. Shannon, you and Mr. Dyer began a study of the placing into operation of the forty-eight hour week sometime at the beginning of the year 1936, is that correct?

A. Yes.

Q. And in that study you discovered that certain men would have to be laid off?

A. That was the final breaking out of the matter.

Q. Well, as you pointed out a moment ago, men working forty-eight hours a week could do the work with a less number of men, isn't that correct?

A. Yes.

Q. And that necessitated certain reduction in force at the various fields where the policy was going to go into effect?

A. Yes.

Q. Now, it wasn't until about April 1st, 1936 that you began to take up the question, I believe, of who was going to

have to lose his job? By losing it I mean by transfer from the Big Muddy field. Is that correct?

A. Yes.

[fol. 1152] Q. And you asked the foremen at that time to prepare their recommendations?

A. Yes.

Q. Now, that campaign for centralizing power that began in 1929 in Big Muddy had been completed in about the summer of 1935, had it not?

A. No, it hasn't been entirely completed yet, Mr. Shaw.

Q. It is still going on, is it?

A. Yes.

Q. Now, about April 1st you asked for recommendations, and I believe you said that four men were recommended, Whitlock, Jackson, Jones and Moore, is that correct?

A. Yes.

Q. Now, how were these four men chosen, if you know? What did they have in common, in other words?

A. Well, they were chosen to be designated by the district superintendent and the foreman after considering their entire problems involved in the reduction of the number of men to be used in the field after the new schedule went into effect.

Trial Examiner Holden: May the basis, please, of such knowledge as this witness has of this matter be carefully shown on the record.

Q. What do you know about why these men were recommended to you by the district superintendent?

A. Because in their view, if I understand your question correctly, they were making the recommendation that they thought was the best for their organization.

Q. Well, did you know what basis this recommendation was made upon?

A. A study of the employees in the district, and in the particular field, Big Muddy.

Q. Now, did you know that that study was conducted?

A. Yes.

Q. And how did you know what elements went into the study, or how the study was conducted?

A. Well, that was the only basis on which the district superintendent and the foreman could solve the problem and make the recommendation.

Q. Did you write any letter to Mr. Thomas or to Mr. Bar-[fol. 1153] tels about April 1st, 1936, advising them as to what consideration should enter into the choice of men for transfer?

A. I don't remember of a particular letter. We were, as you know, in the district progressively changing the field to the new hours.

Q. In other words, this was a conversation you had? Your instructions were given through oral conversation to Mr. Thomas and Mr. Bartels to make their recommendations?

A. Yes.

Q. Now, did you have any written recommendations of Mr. Thomas and Mr. Bartels as to the names of these men to be picked out for transfer?

A. No, I believe that was handed in verbally, in a verbal way. We keep down our correspondence as much as we can.

Q. What conversation did you have concerning Mr. Moore and Mr. Ernest Jones, prior to April 3, 1936? That is the date that you wrote Mr. Dyer a letter asking whether jobs could be found in Oklahoma and Texas for Jones and Moore, "Respondent's Exhibit 14-A".

A. Well, I don't recall having any specific discussion with Thomas and Bartels about Moore and Jones prior to that time.

Q. Now, you participated in those discussions and recommendations, did you not?

A. With Bartels and Thomas, yes.

Q. Now, they picked out Mr. Whitlock?

A. Yes.

Q. And you said that, in the light of the situation at Salt Creek, you changed Whitlock to Canning, is that right?

A. That was the later change.

Q. Well, what was that discussion about? Why did you make that change? What situation at Salt Creek, in other words?

A. Well, I don't know that I took any particular detailed participation in that change. The district superintendent in talking to the foreman at Salt Creek changed the transfer.

Q. You don't know what considerations were entered into at that time, to that point?



A. Mr. Thomas stated that he thought it better to make a transfer of Canning.

[fol. 1154] Q. Now, it was what Mr. Thomas told you, what four men he wanted to move, is that right?

A. Yes.

Q. Did he tell you where he wanted to move them, or was that up to you to decide?

A. No, he talked about where we could place them in his district first.

Q. Now, how did you come to decide that Canning and Jackson should go to Salt Creek?

A. On the basis of Bartels and Thomas recommending that they would fit in out there satisfactorily.

Q. Well, why wouldn't Jones and Moore fit in at Salt Creek, do you know?

A. Well, they, neither the district superintendent nor the foreman at Salt Creek or Big Muddy thought that they would.

Q. And what were the reasons given why they would not fit in at Salt Creek?

A. Well, the same general reasons that I stated the other day, that their services were not particularly satisfactory.

Q. Well, was it the point of view of their attitude toward their work, or their ability, or what?

A. There was no job to which we could transfer Moore that he was suited to in the Wyoming district, and nowhere that it was desirable to transfer Jones to in Salt Creek or in Lance Creek.

Q. Well, now, as a matter of fact, Canning went up to Salt Creek as a roustabout, didn't he?

A. That is probably correct.

Q. Now, Moore was a roustabout, wasn't he?

A. Yes.

Q. Well, why couldn't Moore have gone up instead of Canning?

A. Because he wasn't a roustabout suitable for the work to be done in Salt Creek, and the foreman didn't want him.

Q. Did you know why the foreman didn't want him?

A. Because he didn't think he was suitable to put into the crew there.

Q. Who was the foreman there?

A. Mr. Bowen.

[fol. 1155] Q. Did Mr. Bowen know about his work?

A. Yes.

Q. How did he know?

A. Well, we all have information regarding the various capacities, abilities and experience of each of the men.

Q. Now, why didn't you want to send Jones to Salt Creek?

A. Because we thought we had no job we thought he would fit into satisfactorily.

Q. Well, he was a pumper, wasn't he?

A. Yes.

Q. And you sent Jackson up there as a pumper, didn't you?

A. Yes.

Q. So you had a pumping job open up there anyway, didn't you?

A. Yes, there was a pumping job there.

Q. Well, why couldn't Jones handle that?

A. We didn't think that he was suitable to transfer onto the job that was there.

Q. Now you had the Lance Creek field open at that time, didn't you?

A. Yes.

Q. And you made a lot of transfers to Salt Creek in 1936, as shown by "Respondent's Exhibit 18-A", and "B", did you not?

A. To Lance Creek, you mean?

Q. Yes.

A. Yes.

Q. That was a new field opening up?

A. Right.

Q. Now, why couldn't Moore and Jones have gone to the Lance Creek field?

A. For the same reason that we didn't transfer them to Salt Creek. The foreman at Lance Creek had previously been in both Big Muddy and Salt Creek, and knew these men.

Q. Didn't he like them, or what?

A. No, he didn't like the quality of the work they did.

Q. Now, was there anything wrong with the work of these men?

[fol. 1156] Trial Examiner Holden: Who was the Lance Creek foreman?

Q. Who was the Lance Creek foreman?

A. W. C. Rice.

Q. Was there anything wrong with the work of these men?

A. Well, that is a pretty general question. They were not particularly highly rated men in the work they were doing.

Q. Were they satisfactorily performing their duties?

A. Not entirely so, no.

Q. I turn your attention to "Respondent's Exhibit 14-C", being a letter from Mr. Dyer to you dated April 10, 1936. I shall read the last paragraph, which is very short: "If these employees are not satisfactorily performing their duties, they should be laid off, regardless of the change in schedule. If such is not the case, and they are merely surplus because of the new schedule, I suggest that you give consideration to their transfer to Kevin, Sunburst, Walden, or eastern Colorado. You have new development work planned in those areas for the second and third quarters of 1936, and it may be possible to use them at one of those points." Do you remember that letter?

A. Yes.

Q. Now, after receiving that letter did you make up your mind that these people were satisfactorily performing their duties, in order to work out the order of your superior?

A. No, that didn't change their status in my opinion, at all.

Q. Well, they either were or were not satisfactory employees, isn't that true?

A. They were not satisfactory employees at Big Muddy.

Q. Well, would they have been satisfactory anywhere, in view of Mr. Dyer's explicit instructions to you on April 10: "If they are not satisfactorily performing their duties they should be laid off."

A. Well, I have been confronted with the same problem year after year in the operation of properties. We wanted to give these men a chance in a new district, a new area, is the way I felt about it.

Q. Now, Jones, you knew, was, or Moore, rather, you knew was 54 years old, didn't you?

A. Yes.

[fol. 1157] Q. You knew that his chances in a new area were not very good, didn't you?

A. Why, I don't know why they wouldn't be.

Q. Do you think a man 54 years old can go into a new area in competition with younger men?



A. He was going onto a Cardwell unit for clean-out work, which he should have been qualified to do.

Q. That is pretty hard work for a man of that age, isn't it?

A. Not any harder work than roustabout.

Q. Mr. Dyer told you you ought to give consideration to sending him to Kevin, Sunburst, Walden, or eastern Colorado. Now, did you investigate those situations to find out whether you could use a man at any of those places?

A. Yes, I did. Mr. Dyer, of course, was overlooking the fact that it would be some time before we expected to start any new work in those areas.

Q. I turn your attention now to "Respondent's Exhibit 14-E", and "14-F". You state you have two permanent employees, Moore and Jones. "Both men have been with the Company for a considerable time, and it is our desire that positions be found for them elsewhere in our operations." Did you ever advise Mr. Simcox that these men were not satisfactory employees?

A. No.

Q. Did you want to unload on Mr. Simcox a couple of unsatisfactory employees?

A. I didn't figure that I was unloading on him, exactly. I figured that I was giving the men a chance in a new field.

Q. As I understand it this negotiation for the transfer of these men began April 3, 1936, is that correct?

A. Yes, that is when the recommendation was first made.

Q. And the men were never informed of it until April 27?

A. That is correct.

Q. And at no time was there ever any question put to the men as to what they thought about the transfer?

A. We don't ordinarily do that, no.

Q. You don't take the employee's wishes into consideration in a situation like that?

A. Not until the time comes when the matter has been definitely reached for consideration.

[fol. 1158] Q. Now, Big Muddy was a declining field, wasn't it?

A. Yes.

Q. You say it has been stripper operations for some time?

A. Yes.

Q. The field, practically, has for a long time passed its peak of production, hasn't it?

A. Yes, as far as we know.

Q. Hobbs is a new field, isn't it?

A. Yes.

Q. Do you think it is good operation policy to send two unsatisfactory employees away from a declining field to a new field?

A. Well, you would have to understand all the problems in connection with employing men in new fields. They are experienced men that are being employed in those fields, are men that have to be employed that have worked elsewhere, and they might be unsatisfactory under one set of conditions and entirely satisfactory in another.

✓ Trial Examiner Holden: Let the question be answered, please. Read the question please.

(Question read by reporter.)

A. I think I did answer it to the best of my ability.

Trial Examiner Holden: Is the answer satisfactory, Counsel for the Board?

Mr. Shaw: I don't believe the witness can answer it any better.

Q. Well, what particular condition, Mr. Shannon, in this particular situation could make a man more happy in one field than in another, and make him a more efficient worker?

A. Well, new conditions, new activities, and new things to learn. If a man is going to stay in the oil business he wants to keep up with new developments, and be where there is new things to learn and do.

Q. Well, now, that same argument, Mr. Shannon, would apply to any of the men in the field at Big Muddy, would it not?

A. Yes.

Q. So there is nothing particular to point out of new experience for the men in the oil industry, so far as Moore [fol. 1159] and Jones were concerned, over any of the other men in the Big Muddy field?

A. But that wouldn't change the fact that they were not satisfactory at Big Muddy.

Q. Well, what do you know about the operations at the Hobbs field, that led you to believe these two men would be happier at Hobbs than any place else, or make better employees, more satisfactory employees?

A. I don't mean to make any point about being happier at Hobbs. That was a transfer. I knew that it was a new



field, and they was familiar with the character of the country and the operations.

Q. You knew of the different climatic conditions, did you not, between the Hobbs area and the Wyoming area?

A. Yes.

Q. You knew that Jones and Moore had spent all of their experience in the oil industry in the northern country, did you not?

A. Yes, generally.

Q. I believe you said Moore's trouble was that he had been an old employee of the sort of boomer type, who worked for high wages and he had been a driller, and since that time, and you said that none of those men who had been in that operation ever made good roustabouts?

A. That is generally true, according to my experience.

Q. What is the reason they don't make good roustabouts, if you know?

A. Well, because they have been used to working in a classification at a higher rate, and they think it is sort of beneath them to go back to, going back to a smaller job, and less money.

Q. In other words, they are not very well satisfied with their working conditions?

A. That is partly so.

Q. And that was one of the troubles with Jones, wasn't it, that he wasn't satisfied with his working conditions, and that he was pretty voluble about it?

A. Well, I don't see as that condition applied to Jones. He had never been—

Q. I mean to Moore.

A. Well, will you read that question?

[fol. 1160] (Question read by reporter.)

A. Well, I don't remember of him making any particular reference to the fact that he didn't want to be a roustabout at any time that he talked to me.

Q. Well, you knew of Moore's reputation in the field, that he was always kicking about the amount of work, the amount of money he was getting? Wasn't that what they had against Moore?

A. No, I never heard that that was what that they had against him at all.



Q. Well, what do you mean, then, that his past experience, that it is your past experience that men who have worked in his particular line of work as drillers and as drillers' helpers did not make good roustabouts?

A. Well, I have tried to make that clear, in the sense that it is a demotion. A man who has been a railroad engineer don't want to go back to be a fireman, if he can help it.

Q. And he always carries a grudge, and always talks about it, doesn't he?

A. Well, not necessarily, but these are conditions that are occurring in the fields constantly.

Q. Well, the point I want to find out, Mr. Shannon, is this; if that was Moore's trouble as a worker, that he had been a driller, and had been used to higher wages?

A. That was one of the troubles.

Q. Well, how did that trouble express itself, from the point of view of his work?

A. Well, he didn't make a good roustabout.

Q. Now, here is a man who has been a roustabout for how long, do you know?

A. Moore?

Q. Yes.

A. Oh, he had been off and on at various times working as roustabout.

Q. He had never been discharged as a roustabout, had he?

A. No.

Q. "Respondent's Exhibit 17-A" shows that off and on he has been a roustabout since 1932, and before that was a roustabout in 1927 and 1929 and 1931 and 1932, and the record seems to indicate that after he would be a roustabout he would be a tool dresser each time.

[fol. 1161] A. Yes.

Q. And, apparently, after tool dressing was over, he would go back to a roustabout job. Is that the experience that he had generally?

A. Evidently, yes.

Trial Examiner Holden: It is 12:30, Counsel. You are privileged to conclude your cross-examination if you wish.

Q. This man had never been discharged, had he?

A. By the Company?

Q. Yes.

A. Well, not that I know of.

Q. Do you know if he had ever been disciplined? Have you any record of discipline against the man?

A. No.

Q. How long did it take the Continental Oil Company to find out that this man, Frank D. Moore, was an unsatisfactory roustabout?

A. Well, from the men's reports that were working with him he had been an unsatisfactory employee for a long time, but they had tried to keep him on and take care of him.

Q. Who?

A. The men that he was working under.

Q. You mean Mr. Bartels and Mr. Thomas?

A. Yes.

Q. How long had that condition been going on?

A. Well, quite a long time.

Q. How long to your knowledge?

A. Well, from my knowledge, from the time I came in contact with the situation in 1929. At that time he wasn't considered a particularly satisfactory employee.

Q. And yet you kept him on from 1929 until April 27, 1936, just for charitable reasons?

A. Not for charitable reasons. We kept him on hoping to keep him employed, and that he would do better from time to time.

Q. Well, are there written reports on Moore's conduct, or Moore's unreliability? Were there written reports handed in to you?

A. No, no written reports.

[fol. 1162] Q. Was there ever any written report received by you on the unreliability of this man, Frank D. Moore?

A. No.

Q. Well, can you give me the typical type of thing that was said about Moore by his superiors?

A. Well, I don't believe that I can add anything to what I have already said. There is a difference in all men's work, and his work was not particularly satisfactory.

Q. Now, was it your purpose when you transferred Moore and when you transferred Jones, to pick out the two men in the field, or the four men in the field, who were least satisfactory, and transfer them? That is, were all of these four men the least satisfactory four men in the field?

A. Well, that would probably be the approach in the first instance of the foreman and the district superintendent,



yes. They were charged with keeping their organization up as efficient as they could.

Q. Well, did they have anything to do about the places to which they were transferred? That is, what is the sense of transferring two inefficient men from one field to another field? Wouldn't that also have been a very bad effect on the new field to which they were taken?

A. It might, if they didn't satisfactorily perform their work, but we were willing to give them the chance.

Q. Now, did you ever receive any written report concerning the unsatisfactory quality of the work of Ernest Jones?

A. I don't believe that we had, that we have a practice of making written reports about matters of general conditions like that, because I am constantly in touch with our operations.

Trial Examiner Holden: May that question be answered, please. Read the question.

(Question read by reporter.)

A. No.

Mr. Shaw:

Q. I think perhaps I had better stop here and return after lunch.

Trial Examiner Holden: Off the record.

(Discussion off the record.)

[fol. 1163] Trial Examiner Holden: On the record.

The hearing is in recess until 2 o'clock.

(Thereupon at 12:35 p. m., the hearing recessed until 2 p. m.)

#### After Recess

(Thereupon, the hearing continued, pursuant to recess, at 2:00 P. M.)

Trial Examiner Holden: The hearing is in session.

(Mr. Shaw continued with the cross examination of Mr. Shannon.)

Q. Mr. Shannon, I find in Respondent's Exhibits considerable writing about the cases of Moore and Jones, nothing



about the cases of Whitlock and Canning. Do you know why there was no writing concerning Canning and Whitlock's cases, or Canning and Jackson? That is, no correspondence.

A. Well, there was none necessary. They were disposed of in the field there.

Q. You mean they were disposed of in this division?

A. Yes.

Q. In the State of Wyoming?

A. Yes.

Q. Now, from time to time had you heard criticism concerning the work of other employees in the Big Muddy, in addition to criticism concerning the work of Jones and Moore?

A. Well, from time to time there were conditions discussed in regard to leases and their operations, and the work being done by the men, yes.

Q. And Moore and Jones were not outstanding in that respect, were they? That is, that their work was criticized from time to time?

A. Well, what period, Mr. Shaw, and in what way? I don't believe—

Q. Well, I don't know the period, Mr. Shannon. I assume the period since they have been working there in the field, that is, since 1929.

A. Well, we have, the quality of the work being done by the various men is quite different, and still is.

Mr. Shaw: Read the question, and I will ask for an answer.

[fol. 1164] (The question was read by the reporter.)

A. Well, they were the men that were recommended by the foreman and the superintendent for transfer.

Q. Well, I will put my question this way; were there other men in addition to Moore and Jones whose work was criticized since 1929 in the Big Muddy field?

A. Yes.

Q. And some of these men are still working at the Big Muddy field, are they not?

A. Yes.

Q. And their work was criticized as seriously as the work of Jones and Moore, was it not?

A. Not as continually.

Q. Now, did you sit down with Mr. Bartels and Mr. Thomas with a pay roll list, or a list of men, and assist them in any manner in making these recommendations?

A. We went over the pay roll list, and I requested them to make their recommendations.

Q. Well, did you have any suggestions to make?

A. No, nothing other than to, for them to have due regard to what they were expected to do in the manner in the way of maintaining their organization.

Q. Well, was there any fear or anything of the sort that if Jones and Moore were kept there, that they could not maintain their organization?

A. That matter wasn't discussed.

Q. Now, in the month of April, 1937, there were a good many pumpers in the field, were there not, in the Big Muddy?

A. Yes, there were a number of pumpers.

Q. Do you know how many of them were older in point of service than Ernest Jones?

A. I couldn't tell you off hand.

Q. Well, he had had a long service record with the company, hadn't he?

A. He had been on a number of years.

Trial Examiner Holden: The record shows April 1937.

Mr. Shaw: April 1936, excuse me.

Q. Was there any roustabout at Big Muddy with as long a service record as that held by Dinty Moore?

[fol. 1165] A. I believe not at that time.

Q. Now, from the point of view of seniority, if seniority was followed strictly, there would be no justification in transferring these men, isn't that true?

A. Yes.

Q. And as I understand it, the only reason why the men were transferred was because Moore was the poorest roustabout, and Jones was the poorest pumper in the field?

A. They were the most unsatisfactory at that time.

Q. Do you know why, if they were so unsatisfactory at the time when they were ordered to be transferred, that no statement was made concerning their unsatisfactory work?

A. No statement made to whom?

Q. To them, by Mr. Bartels or Mr. Thomas.

A. No, I do not know why a statement wasn't made to them.



Q. Do you know why, in view of their unsatisfactory work, not a single statement was made to Mr. Simcox concerning that unsatisfactory work?

A. Well, I don't think it was necessary to write Mr. Simcox about it. He wouldn't expect it.

Q. Now, did you expect to transfer Ernest Jones and Dinty Moore at the same time?

A. We expected to work out the transfers of the four men to be made on May 1 and as I recall it, Mr. Simcox had an opening for Moore quicker than he did for Jones, is my recollection.

Q. Well, I turn your attention to "Respondent's Exhibit 14-E", and "F", Mr. Dyer's letter to Mr. Simcox: "It is my thought that you will be needing additional men in the New Mexico area at an early date, and that these men could be transferred to that point. Mr. Ernest Jones will be available for immediate transfer, and I suggest that you make arrangements to request his transfer to the first new job you have in the New Mexico district, and that Mr. Moore be considered for the next opening in that district, or elsewhere in your division, but preferably in the New Mexico district." Do you recall that?

A. I do, now. I didn't recall it at the time I answered your question.

Q. Well, do you know why it was suggested that Jones leave first, and Moore leave second?

[fol. 1166] A. No, I do not.

Q. Well, did you know anything about the condition of Moore's wife at that time?

A. No, I didn't.

Q. Well, do you know that any of your subordinates did?

A. Well, I assume that they may have known if there was any general sickness in one's family there.

Q. Well, did they advise you of that when you discussed the transfer of these men?

A. No.

Q. No discussion of that was made?

A. I don't recall any.

Q. Now, "Board's Exhibit 14-K", and "14-L" is a letter from Simcox to Mr. Shannon saying: "We have an opening for a roustabout in the Hobbs-Monument area, New Mexico District, and desire to fill this opening by transferring from the Rocky Mountain Division Mr. Ernest Jones, who is at



the present time classified as a pumper-working in the Big Muddy field, Wyoming." Do you recall that?

A. Yes, I have the letter.

Q. April 22, 1936?

A. Yes.

Q. Well, do you know how it came about that Mr. Simcox picked out Mr. Jones before he picked out Mr. Moore?

A. Well, I presume because Mr. Dyer had said in that previous letter that Jones would be available for immediate transfer.

Q. Then, on April 28, you had a wire from Frank Simcox, being "Respondent's Exhibit 14-O", saying: "Frank D. Moore report to H. L. Johnston, Hobbs, New Mexico, assignment duties cleanout helper." So that is when Moore was decided to be transferred, that is when you decided to transfer Moore, is that right?

A. Yes.

Q. Now, that was on April 28, is that right?

A. Yes.

Q. How do you account for the fact that Moore was notified on April 27, that he was to be transferred to Hobbs, New Mexico?

A. How do I account for what?

[fel 1167] Q. How do you account for the fact that Moore was notified on April 27, that he was to be transferred to Hobbs, New Mexico?

A. Well, I don't know. Was he notified on the 27th? I will have to see.

Q. That is what the evidence shows, Mr. Shannon.

A. Well, I don't have that here in the file. Was there evidence to that effect?

Q. That is the testimony of Mr. Moore, I believe. Apparently you didn't know until the 28th of April 1936 that Moore was going to be transferred at that time to Hobbs, New Mexico.

A. Yes.

Q. You didn't know then at that time?

A. Apparently not, no. I don't remember the dates.

Q. This morning there was introduced into the records "Board's Exhibit 137-D", and "H", which are photostatic copies of these original pay rolls bearing the signature of R. C. Bartels, approved by him, and H. J. Windsor, and yourself. I turn your attention to the statement opposite

Mr. Moore's name on the pay roll, the statement: "Terminated 4-30-36", which is crossed out, and written in handwriting the words: "Transferred." Do you see that?

A. Yes.

Q. Now, do you know what date that pay roll was prepared?

A. No, I don't know the exact date.

Q. Well, do you know whether as an actual fact Moore's services were terminated, and later he was transferred?

A. Well, he was offered a transfer, and then declined it, and was terminated.

Q. Well, he was offered a transfer, Mr. Shannon, according to the evidence, on April 27, one day before there was a place open for him at Hobbs, New Mexico. Do you know whether that is correct or not?

A. I don't believe it can be correct, as far as this reference here is concerned.

Q. As far as this reference here is concerned, do you have some special date in mind when that was put on there?

A. No, I don't. I don't know anything about the document [fol. 1168], except as it appears. That information may have been put on this pay roll at some later date in May.

Q. When customarily would the April 30 pay roll reach your desk?

A. It would reach my office ordinarily about the 2nd or 3rd of the month.

Q. Of May, that would be?

A. Yes.

Q. Now, opposite the name of Mr. Jones, there is the notation: "Transferred to Hobbs, New Mexico, to be effective May 1, 1936." Is that right?

A. Yes.

Q. And opposite the name of Mr. Canning and Mr. Jackson there are statements indicating where the men were transferred to, aren't there?

A. Yes.

Q. Is there any statement where Mr. Moore was transferred to?

A. No.

Q. Do you have in force at the Big Muddy field what is called an efficiency rating of men?

A. No.

Q. You have no way of rating the men from the point of view of personal efficiency?

A. Only through the general knowledge of the supervisors, myself, the foreman, and district superintendent.

Q. Now, when you found out that Moore had a sick wife who was very ill, you wrote a letter to Mr. Thomas enclosing a letter to Mr. Moore, is that right?

A. Yes.

Q. Now, your letter to Mr. Thomas reads as follows: (I am reading now from "Respondent's Exhibit 14-Y", being your letter dated May 4, 1936.) "If he (that is Mr. Moore) elects to go back to work in his previous status, I will ask that you give him the enclosed letter setting out our position in the matter. A copy of this letter is attached hereto." Now, what did you mean by "going back to work in his previous status"?

A. As roustabout.

Q. Well, did you have any doubt that he wouldn't go back to work as a roustabout?

[fol. 1169] A. No, I didn't have any doubt that he would. I thought he would.

Q. Now, Mr. Thomas stated not to give him the letter unless he did wish to go back to work in his previous status, is that right?

A. Well, I don't think that was just the intent of the letter. I don't know just what you mean, that he wasn't—

Q. Well, according to the language of your letter, Mr. Shannon, Mr. Thomas was only to give him the enclosed letter providing he elected to go back to work at his previous status, isn't that true?

A. Yes.

Q. And if he didn't elect to go back to his previous status, Mr. Thomas was not to give him the enclosed letter?

A. Yes.

Q. And he didn't give him the enclosed letter, did he, or do you know?

A. My understanding was that he did give it to him.

Q. And now, Ernest Jones never received any opportunity to return to his job in Big Muddy, did he?

A. No.

Q. "Respondent's Exhibit 14-Z", reads as follows: "I return herewith the E & C Form sent in duplicate to cover the termination of employment of Ernest Jones as pumper



in Big Muddy, effective April 30, in view of his decline to accept a transfer to Hobbs, New Mexico." Do you have that form with you?

A. The form?

Q. Yes, I want the form, if you have it.

A. No, I don't have it.

Q. The next paragraph reads as follows: "The E & C Form is improperly filled out, and I will ask that you have new form prepared setting out under 'Reason:' 'Services no longer required due to reduction in force, and employee declines transfer to Hobbs, New Mexico.'" Now, do you know what the old E & C Form had on it, in Ernest Jones' case?

A. No, I don't.

Q. Do you have any of Jones' E & C Forms with you?

A. No, I don't.

Q. Do you know why the E & C Form of Moore was introduced, and not the E & C Form of Jones?

[fol. 1170] A. No, I don't know that it had any particular significance one way or the other. I don't know why it wasn't.

Mr. Akolt: That particular one was an enclosure in one of the letters, written. Isn't that right?

Mr. Shaw: Well, the one that I am requesting was inclosed with "Respondent's Exhibit 14-Z, apparently, but does not appear as an exhibit in this case.

Mr. Akolt: The one that was sent in was sent back by Mr. Shannon to Mr. Thomas.

Mr. Shaw: It does not appear as an exhibit.

Mr. Akolt: It was destroyed, I presume.

Witness: I assume that it was destroyed, when the other one was written up.

Q. You don't think that is in existence at this time?

A. I don't think so.

Mr. Akolt: Are you talking about the one he sent back, that was incorrect?

Mr. Shaw: That is right. Mr. Shannon thinks it is not in existence.

Q. Now, do you know about the final E & C Form of Jones', properly filled out according to your instructions?

A. Well, it no doubt was followed through our estab-

lished routine, and wound up in the place where it is supposed to wind up.

Q. Moore said in his testimony that the reason he refused to go back to the Big Muddy field was that there was a condition placed upon his reemployment at the field, that is, he would be employed there only as long as his wife was ill. Do you know anything about that?

A. No.

Q. Was there any other instructions give- to Mr. Thomas orally, or in writing, about how he should handle Moore?

A. After that letter of mine to Mr. Thomas of May 20.

Q. I am talking about the letter of May 4th, in which you enclose your letter of May 5th to Mr. Moore, that I have just read.

A. Yes.

[fol. 1171] Q. Being "Exhibit—

A. Well, I thought you asked the question if there was anything more that I had communicated to Thomas about Moore after that.

Q. No, I am sorry, I didn't state my question properly. With reference to "Respondent's Exhibit 14-X", and "14-Y", you tell Mr. Thomas what he is supposed to do with relation to Moore's case. He is supposed to hand "Respondent's Exhibit 14-Z", and "14-W", to Moore, provided Moore is willing to go back to work at his present status. Now, was there any other instruction other than you have put into evidence here that you told Mr. Thomas?

A. No.

Q. There was no understanding between you and Mr. Thomas as to how Mr. Thomas was to handle this?

A. No.

Q. Now, you wrote Mr. Moore again on May 20, you wrote Mr. Thomas, rather, on May 20, enclosing a letter to Mr. Moore. In other words, you wrote "Respondent's Exhibit 14-EE", enclosing "Respondent's Exhibit 14-DD", is that correct?

A. Yes.

Q. And you state there in Mr. Thomas' letter, that he is to offer Mr. Moore again a chance to go back to work in accordance with the terms of your letter of May 5, and advising him that the offer to continue his employment will be withdrawn unless he reports to work within 48 hours, and further advising Thomas that he is to let you know what happens. That is right, isn't it?



A. Well, yes.

Q. In the letter it requests Thomas to have Bartels personally deliver the letter to Moore?

A. Yes.

Q. Now, why didn't you write Moore a letter directly on this matter, through the mail?

A. For the reason that I thought it better for the district superintendent or the foreman to see him personally and give him the letter, and endeavor to dispose of the matter.

Q. Had you heard, at any time had Mr. Thomas or Mr. Bartels advised you how Moore acted when the first letter was handed to him on May 5 or May 6?

[fol. 1172] A. No.

Q. Did Mr. Thomas report to you what he had told Mr. Moore when he delivered the letter to him, or what Mr. Bartels had told him?

A. No, I don't recall that I had an opportunity to talk with Mr. Thomas about the matter in that interim there, between, I was pretty much on the go all the time.

Q. Now, turning for a moment to the case of Ernest Jones, you say Ernest Jones' big trouble was that he sometimes had his lease dirty, is that right?

A. That was one of the things, yes.

Q. Did other men have their leases dirty from time to time?

A. Yes.

Q. How much more did Mr. Jones have his lease dirty, for example, than Mr. DeClue?

A. Well, I couldn't make any definite statement in regard to that.

Q. You don't know as to the precise comparison between those various pumpers in the field, do you?

A. I would rely on the foreman and district superintendent considerably in those matters.

Q. None of this knowledge concerning the work of these individuals is knowledge of your own, is it?

A. Other than to have seen the condition of these leases on which the various men were working.

Q. Well, now, from your own personal observation, in watching the condition of those leases, would you say that Mr. Moore was the dirtiest pumper in the field?

A. You mean Mr. Jones?

Q. Mr. Jones.

A. Well, I had never given it a thought in that way. He



was among those that weren't keeping up their leases particularly well.

Q. There were a number of others, were there not?

A. There were some others.

Q. Who were the others, do you know?

A. No; I don't know that I could give you the list right now, without studying the situation, refreshing my memory on it.

[fol. 1173] Q. Well, was there anything else wrong with Jones' work?

A. Well, not that I was concerning myself about.

Q. Now, you said yesterday that Jones was making \$117.50 a month at Big Muddy as a pumper?

A. Yes.

Q. And that he was to go down to Hobbs and make \$120.00 a month, is that right?

A. Yes.

Q. As a roustabout?

A. Yes.

Q. How many hours a week were they working at Hobbs at that time?

A. Well, they were going, I believe, on the same schedule.

Q. 48 hours?

A. Yes.

Q. And if Jones had stayed at Big Muddy and worked on the 48 hour schedule beginning on May 1, he would be making \$130.00 as a pumper, wouldn't he?

A. Yes.

Q. So, as a matter of fact, he was being demoted \$10.00 a month by being shipped to Hobbs, is that true?

A. He was going into that other classification, yes.

Q. Well, he was being demoted \$10.00 a month, from a pumper to a roustabout?

A. Yes.

Q. Now, these men were not told on the 27th of April, were they, or do you know, whether their expenses down there would be paid or not?

A. Not in the first instance, from the correspondence that was developed later.

Q. It indicates that Mr. Dyer wired on April 29, 1936, in response to another wire on April 29, that their traveling expenses would be paid?

A. Yes.

Q. So they didn't know until that date that their expenses would be paid, is that correct?

A. That is right.

Q. And they were expecting them down the first of May?

A. Well, as soon as they could get down there after that date.

[fol. 1174] Q. How far is it from Glenrock or Parkerton to Hobbs, New Mexico, do you know?

A. No, but it is six or seven hundred miles, I would guess.

Q. Well, it is that much anyway, isn't it?

A. Yes.

Q. And Hobbs is very close to the Texas border, near El Paso, Texas, isn't it?

A. It is in eastern central New Mexico.

Q. Now, there is some discussion here about Jones' illness and accident record. You said that his accident record was considerably higher than the accident record of other workers in the field, is that right?

A. In regard to whose?

Q. Jones.

A. I said that their accident and health records as indicated by these exhibits indicated they were both well above the average on account of accident and illness.

Q. Well, now, did you compare, at the time this transfer was made did you compare the health and accident records of all the employees of the field?

A. No.

Q. When did this occur, that you did compare the health and accident records of other employees in the field?

A. Well, it didn't occur to me to make it at all.

Mr. Shaw: You mean it occurred to your lawyer.

Q. I want to find out, Mr. Shannon, only one thing, whether or not the health and accident record had anything to do with the transfer of these men.

A. It probably had considerable to do with it, in connection with Mr. Bartels and Mr. Thomas, viewing their situation.

Q. But didn't have anything to do with you, you didn't consider it?

A. Not at that time, no.

Q. You did later on?

A. I don't know that I did later on.

Q. Do you know of your own knowledge whether it had



anything to do with Mr. Bartels or Mr. Thomas coming to the conclusion that these men should be transferred?  
[fol. 1175] A. I would assume that it was one of the factors they used in—

Trial Examiner Holden: May we please confine the testimony to matters within the knowledge of the witness.

Mr. Shaw: Yes.

Q. If you know, Mr. Shannon. Have they talked to you about it, or anything of that sort?

A. I think they considered it.

Q. How do you know they considered it?

A. That was one of the things they would consider in studying their transfers.

Q. Well, did you instruct them to consider it?

A. No, it wasn't necessary.

Q. Did they discuss having considered it with you?

A. Not that particular feature.

Q. Well, you don't know whether they did or not, then, do you?

A. No.

Q. Now, Jones has a lost time accident in 1932, when he fractured his right arm. Do you know about that?

A. Nothing, except that the report came through. We had a lot of detail work to consider all the time. I don't remember any details about it.

Q. Did you know that he was cleared of that accident?

A. Well, how do you mean, cleared of it?

Q. He was cleared of responsibility for it, by his supervisor?

A. I probably did at the time.

Q. Does that make any difference in a man's accident?

A. Yes, that makes a difference.

Q. Did you know of his tooth operation, tooth extraction, occurring in 1933?

A. Well, the only observation I would have of it would be what notice may have come to me on sickness.

Q. Did you know that these tooth extractions were the result of an accident in 1928, while in the service of the company?

A. No.

[fol. 1176] Q. When about 7 tons of steel dropped on him at Walden, Colorado?

A. No.



**Trial Examiner Holden:** The Examiner is reluctant to interrupt the testimony, and I appreciate this matter was gone into on direct, but inasmuch as the witness has testified that he gave no consideration to this report, and that he has no knowledge of whether or not it was considered by his subordinates, is any useful purpose served by going into it at this time?

**Mr. Shaw:** Well, of course, I am merely going into it to show that this man had actually a pretty good accident record, as a matter of fact, I am dropping the examination.

**Trial Examiner Holden:** Well, proceed. No formal objection has been raised.

**Q.** Now, as I understand it from your previous testimony on direct, these men were not only bad workers, inefficient workers, but they were bad risks?

**A.** I don't remember testifying to that.

**Q.** Well, as Mr. Akolt brought out in examination, these were the kind of men that might cause the company to lose a lot of money. They got into accidents, and that costs the company money?

**A.** Yes, they might.

**Q.** And did you think it was proper to send to Mr. Simcox men who were not only bad workers, but who were also dangerous risks to your company, without advising him of their accident record?

**A.** I explained that I thought that they were going into a new territory, and perhaps they would improve their work, the quality of it.

**Q.** Well, in a boom field, that is a new flush field, there are more risks than there are in any declining field, are there not?

**A.** Well, it depends on the quality of work that a man is doing in the field.

**Q.** Now, you said you tried to give every fair consideration to the problem of seniority, is that right?

**A.** Yes.

**Q.** You said seniority was only one of the elements, however, to be considered, with other elements, is that right?

[fol. 1177] **A.** Yes.

**Q.** In other words, if you have two men who are equal in ability and attitude toward work and efficiency, who have equal seniority, you would give the man, not equal seniority, but one is senior to the other, you would give the man

who did have the oldest seniority the benefit of the doubt, is that the idea?

A. Well, the benefit of the doubt, I don't—

Q. Well, I mean you would give him—Let's assume for a moment that on this transfer at Big Muddy, if seniority had entered into it, and if seniority had had anything to do with the transfer, if Jones had been equal in ability and efficiency, with, say, a man like DeClue, and Jones were older than DeClue, you would have transferred DeClue and let Jones stay at Big Muddy because of his seniority, is that what you mean?

A. Yes, that is approximately what I mean.

Q. But the men have to be absolutely equal according to efficiency and ability?

A. Well, there is others, efficiency covers a pretty wide scope.

Q. It covers such a wide scope that efficiency can be just anything that the company wants to make it, can't it?

A. Well, each superintendent and foreman and myself have to be our own judges of what we consider efficiency.

Q. Well, now, did you know whether Mr. Moore had any children or not?

A. No, I did not, prior to this transfer.

Q. And you say it didn't make any difference to you that these two men were on the Workmen's Committee?

A. That is correct.

Q. Now, apparently you had in mind in April that the field was going on a 48 hour basis on May 1, is that correct?

A. Yes.

Q. And that by May 16 the field had to adapt itself to a 48 hour week schedule, with reference to the men involved, that is May 16th was the deadline, on that date no more men could be employed there than was absolutely necessary under your schedule of 48 hours a week, is that correct?

A. That was the plan.

Q. And you were going to put that into effect?

A. Yes.

[fol. 1178] Q. And that was decided upon, that plan, about the first of April?

A. The definite steps toward carrying it out were gotten under way at that time.

Q. And at that very time you were aware of the fact that Jones and Moore, as members of the Workmen's Commit-

tee, were bargaining with you, through their committee and through Mr. Shipp, to try and establish in that field a 36 hour week, were you not? According to Article IV of the proposed contract of February 6?

A. They were on the committee, yes.

Q. And they were militant active men on that committee, were they not?

A. They were active on the committee.

Q. Did it ever enter into your mind that Jones and Moore might possibly be stumbling blocks in the way of your putting it into effect, the 48 hour week?

A. No.

Q. That never occurred to you?

A. No.

Q. You knew they wanted the maintenance in the future of the 36 hour week, because of their proposal in their proposed contract of February 6, did you not?

A. I knew that was one of the articles in that proposal.

Q. Now, as I understand it, transfers are the kind of things that oil workers can look forward to?

A. Yes.

Q. In the normal course of events fields go down in production after their flush period, and the going down is a progressive affair, is that right?

A. Oh, that is among other reasons. There are continually transfers.

Q. And there are continual transfers, I believe, within your division?

A. Yes.

Q. Men are continually transferred from the State of Wyoming to the state of Colorado and the state of Montana?

A. Frequently.

Q. And there are not only transfers in your division, but transfers between divisions, of men?

[fol. 1179] A. Yes.

Q. Now, as I understand it, as you told us yesterday, the main working conditions, main policy concerning wages, hours, working conditions, and labor conditions affecting the employees in the field are not decided here in the State of Wyoming, but are decided in Ponca City, Oklahoma, is that correct?

A. The final approval is in Ponca City.

Mr. Shaw: I think that is all.



## Redirect examination.

By Mr. Akolt:

Q. The fact remains, Mr. Shannon, does it not, that on account of putting the 48 hour week into effect it was necessary to reduce the Big Muddy force by four?

A. Yes.

Q. So some four men had either to be discharged or transferred, did they not?

A. Yes.

Q. It was necessary for somebody to pick out the four men to be either discharged or transferred, was it not?

A. That is correct.

Q. Your company adopted a policy, did it not, of trying to prevent discharges, and trying to take care of these men by transfers?

A. Yes.

Q. And in the course of following out that policy, the foreman in charge of the field, and the district superintendent in charge of the district, with your approval, designated four men to be transferred?

A. That is correct.

Q. And two of these four men were Jones and Moore, were they?

A. Yes.

Q. Now, I think I am correct in stating, am I not, that the other two men transferred were also Union men?

A. I believe they were.

Mr. Akolt: I think that is in the evidence.

Mr. Shaw: Off the record,

(Discussion off the record.)

[fol. 1180] Trial Examiner Holden: On the record.

Q. Mr. C. N. Erwin was a pumper in the field at that time, was he not?

A. Yes.

Q. And he was the president of the Union?

A. Yes.

Q. He was not transferred?

A. No.

Q. Do you recall that in the election in the summer of 1934, held under the auspices of the Petroleum Labor Policy

Board, do you recall what the vote was in favor of the Union, as against the Independent?

A. We have talked about so many figures, I can't give you the exact figures, but I know it was a substantial number that voted for the Union.

Mr. Shaw: That is in the evidence here, I believe.

Mr. Akolt: 26 for the Oil Field, Gas Well and Refinery Workers, 4 for the Plan of joint representation of employees and management, and 1 for individual bargaining. That is 26 out of 31.

Q. Had anything ever been submitted to you to show that there had been any change in the Union membership from the time of the 1934 election?

A. I don't recall that there had.

Q. You knew Mr. Simon was a member of the Union, and a member of the Workmen's Committee?

A. Yes, he had been on the committee.

Q. Did you have personal knowledge of the membership in the Union of other Big Muddy men besides those I have mentioned, through their activities or announcements?

A. I knew that Mr. Shafer had been on the committee at one time and Mr. Bormuth, I believe.

Q. And Mr. Simon?

A. Yes.

Q. And none of these men were transferred?

A. No.

Q. Did you know that any of the other men who were transferred were non-Union?

A. No.

[fols. 1181-1187] Mr. Akolt: On the question of membership of Jackson in the Union, Mr. Examiner, the records show on page 445 of Mr. Erwin's testimony, he was asked: "Was Jackson a member of your Union?" He answered: "He was."

Mr. Shaw: Off the record.

(Discussion off the record.)

Trial Examiner Holden: On the record.

Q. Mr. Akolt: "Q. In good standing at the time he was transferred?" A. "I couldn't say as to that."

Mr. Shaw: I knew the record stated that Jackson was a member but there was doubt whether he was in good standing: but there was no doubt that Canning was a member who was in good standing.

Q. Did any Union affiliations or activities of Moore or Jones enter into your approval of their transfers?

A. It did not.

Q. To your knowledge did other men, either Union or non-Union, who were transferred, make any objection?

A. None that came to my attention.

. . . . .

[fol. 1188] Examination.

By Trial Examiner Holden:

Q. Mr. Shannon, there are a few points that I should like to clear up. First, could you get for me an organization chart which would show the positions of the principal men whom we have discussed, that is yourself, Mr. Dyer, and Mr. Bowen, and the others, those in supervisory and administrative capacities, affecting the operations at Salt Creek and Big Muddy?

A. Yes.

Q. Set up on one sheet so that we could see the set-up?

A. Yes.

Trial Examiner Holden: It would be helpful, at a date prior to recent changes which were made.

Mr. Akolt: What do you mean by that?

Witness: Do you mean before the transfer of the four men in the Big Muddy field?

Trial Examiner Holden: There has been at least one change, but it is understood that before that there was a time when the set-up was the same.

Mr. Shaw: Last July Mr. Bowen and Mr. Bartels traded places in the Big Muddy and Salt Creek fields. Now, that is one change, which involved no structural, fundamental change as to trading of men, I understand. Now, the second change has been the withdrawal of Mr. Kennelly.

Trial Examiner Holden: Prior to either of those dates should be entirely satisfactory.

Witness: All right.



Q. With reference to Mr. Jones and Mr. Moore, I understand that you exercised no direct voice in the selection of the four men who were finally chosen to be transferred in April 1936, in the actual selection?

A. No, I requested the foreman and the district superintendent to make their selection, and a recommendation.

Q. And you did not participate wholly in that selection, is that right?

A. That is right.

Q. The names were submitted to you, and you approved them?

[fol. 1189] A. Yes.

Q. Tell me, please, what, if any, consideration was given to the specific names submitted to you in giving them your approval?

A. My general familiarity with the personnel of the Big Muddy field?

Q. Well, take the name of Canning, did you consider Mr. Canning, whether or not he was a proper one to be selected?

A. Yes, I passed on their recommendation.

Q. What specific consideration did you give to Mr. Canning, insofar as you recall?

A. Well, only to the effect that if he was satisfactory for a transfer, to Mr. Thomas and Mr. Bartels, that unless I knew of some reason why I didn't agree with them, I approved their transfer.

Q. And did that same consideration apply to the other men chosen?

A. Yes.

Q. So that I understand in all cases you relied primarily on the judgment of Mr. Thomas and Mr. Bartels.

A. Yes.

Q. In no case you found reason to differ with their selections?

A. Unless——

Q. In no case?

A. In this transfer?

Q. Yes.

A. No, I didn't differ in this transfer.

Q. And their selections were then approved by you?

A. Yes.

Q. Now, insofar as the places to which these men would be transferred, do I understand that you gave specific consideration to every field in your district?

A. Well, in what way, now?

Q. Well, I understand your problem was to find places for four men?

A. Yes.

Q. Now, did you consider whether or not there were places in any of your districts for these four men?

A. Well, I knew that we had no place outside of the Wyoming [fol. 1190] district in my division for any men at that time, and therefore—

Q. And what were the possibilities of the Wyoming field involved?

A. Well, we had no places for but two men in the Wyoming district along at that time.

Q. And where were those places?

A. Those were at Salt Creek.

Q. How did you know that?

A. On the basis of the schedules sent in, showing the number of men on the payrolls, on the schedule prior to the reduction in hours, and the number that would be there after the reduction of hours.

Q. And who specifically arranged for the transfer of Canning and Jackson to Salt Creek?

A. The District Superintendent, who had charge of the entire Wyoming District.

Q. Being who, please?

A. J. C. Thomas.

Q. He took care of that matter, is that right?

A. Yes, sir, he wrote in his report that he was recommending these changes, and would approve the transfer of these two men to Salt Creek.

Q. So then your problem was the matter of transferring Mr. Jones and Mr. Moore?

A. Yes.

Q. Which I understand you referred to Mr. Dyer?

A. Yes.

Q. And you had no direct participation in determining to what particular field they would be transferred after you referred the matter to Mr. Dyer, is that right?

A. No.

Mr. Akolt: There is one question on that that Mr. Shaw or I asked. This Fort Collins business with Mr. Moore, you had something to do with that, didn't you, after you referred it to Mr. Dyer?

A. Yes, we offered to give him a transfer down there which would have meant a reduction at Fort Collins.

Q. Did you authorize Mr. Thomas or Mr. Bartels to [fols. 1191-1195] notify Mr. Jones or Mr. Moore as to what their pay would be in New Mexico when it was determined they would go to Hobbs?

A. Just as soon as I had that information, yes.

Q. You authorized them to tell Moore and Jones what pay they would receive?

A. Yes.

Q. Now, I understand that pay was based on a 48 hour week at those places?

A. Yes.

Q. Was the statement made in letters or verbally, concern- their pay?

A. I think it was received by myself by telegram from the Fort Worth division, that is the division into which they were going, and relayed to them through Mr. Bartels by telephone, I believe, perhaps by telegram.

Q. So far as you know, why were the hours of work increased from 40 hours to 48 hours in 1936?

Mr. Shaw: From 36 to 48, Mr. Examiner.

Q. From 36 to 48?

A. Well, I don't know all the reasons why that was done, but one of the prime reasons was to enable the men to have a larger monthly earning, and most of the field men had worked at those hours or longer in years before that.

Q. That was before the NRA?

A. Yes.

Q. Now, so far as you know, why were the hours reduced early in 1937?

A. Business conditions were improving. Those are some of the reasons, just the reasons that I know were considered. It would give more men work.

Q. Do you know how many men were taken on at Big Muddy when the 40 hour week was made effective?

A. No, I'd have to check to be able to give you that information accurately.

Q. Who would have information as to the increase in personnel?

A. Well, the foremen and the district superintendents.



I have a great many fields and I hesitate to make just a guess at it, because the actual information is available.

[fol. 1196] R. C. BARTELS, a witness called by and on behalf of the respondent, Continental Oil Company, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Akolt:

Q. Will you state your full name for the record?

A. R. C. Bartels.

Q. And where do you live?

A. Out in the Salt Creek Field.

Q. By whom are you employed?

A. Continental Oil Company.

Q. How long have you been employed by the Continental Oil Company?

A. Since February, 1921.

Q. In what capacities and where?

A. Well, I started out as a clerk in the Big Muddy Field in 1921, and I later was clerk and warehouseman and field ganger, and I was made field foreman in September, 1933, and transferred to Salt Creek as field foreman of that field in July of 1938 or 37.

Q. Now, from 1921 to 1937 you were at all times employed in the Big Muddy, up to July of that year?

A. Yes, sir.

Q. Up to what date in July?

[fol. 1197]. A. July 1st.

Q. And in what capacity are you now employed in Salt Creek Field?

A. Field foreman.

Q. What were your duties as foreman in Big Muddy?

A. General supervision of the field.

Q. Did you have supervisory jurisdiction over the men employed in the field?

A. Yes, sir.

Q. That would include pumpers and what else?

A. Pumpers, roustabouts, truck drivers, head roustabouts and clerks.

Q. And the clerks?

A. Yes, sir.

Q. Who was your immediate superior?

A. J. C. Thomas.

Q. And what was his capacity with the company?

A. He was district superintendent of all, what was then called the Wyoming division.

Q. And do you know what that district included? Did that include the whole State of Wyoming?

A. I think it did, most of the State, at that time.

Q. Was that subsequently changed so as not to include all of the State?

A. That was changed, I believe, last February 1st, 1938.

Q. So that they now have more than one district in Wyoming?

A. Yes, sir.

Q. And Mr. Thomas is now superintendent of what?

A. Superintendent of what they now call the Central Wyoming District.

Q. And does that include Big Muddy and Salt Creek?

A. Yes, sir.

Q. Does it include Lance Creek?

A. No, sir, it doesn't.

Q. So under the present set up, Lance Creek is excluded from Mr. Thomas' district?

A. Yes, sir.

Q. Were you in the different jobs that you held at Big [fol. 1198] Muddy and the different capacities in which you worked, including field foreman, acquainted with the pumpers, roustabouts and other workmen in the Big Muddy Field?

A. Yes, sir.

Q. Would you say that you were well acquainted with all the men working for the company in the field?

A. Yes, sir, I believe I was.

Q. Did you have occasion to observe and to learn the character of the work which the men in the field were doing from time to time?

A. Yes, sir, I did.

Q. Were you held responsible to Mr. Thomas and to the superiors in the company above Mr. Thomas, for the getting out of the work in the field?

A. Yes, sir. After I was appointed field foreman, I was given those responsibilities.

Q. What responsibilities were you held to along that line?

A. Of keeping the field in good condition as to operations, and also as to policies.

Q. And were you held responsible for getting the oil out of the ground in a proper way?

A. Yes, sir.

Q. Were you held responsible for keeping the engines, boilers, and other equipment in a proper condition?

A. Yes.

Q. Were you held responsible for the work which the roustabouts were required to do?

A. Yes, sir.

Q. Were you held responsible to avoid as much as possible, accidents both to persons and property?

A. Yes, sir.

Q. Were there inspection trips, or inspections with or without trips, made by your superiors from time to time to observe what was going on in the field?

A. Yes, sir.

Q. Who got the blame from your superiors in case things were not in the condition that your superiors thought they should be in?

A. The blame usually fell on me.

Q. You became field foreman at what time?

[fol. 1199] A. In September of 1933.

Q. You were acquainted with Mr. Ernest Jones and Mr. F. D. Moore or D. F. Moofe?

A. His right initials were F. D. Moore, and I was acquainted with both men, yes, sir.

Q. And how long have you been acquainted with them?

A. Well, I have been acquainted with Mr. Moore ever since the first year I came to the field, possibly some time in 1921, and the first I knew Mr. Jones was right while, was, I believe, when he came to Big Muddy the last time, in 1928.

Q. And you knew both of them since those dates that you have mentioned?

A. Yes, sir.

Q. Do you recall the time in the year 1936 when the company was going on a 48 hour week in Big Muddy?

A. Yes, sir.



Q. State whether or not in the ordinary course of operations of the Big Muddy Field, the going on a 48 hour week caused a reduction in the working force of the field?

A. Yes, sir, it did.

Q. By what number?

A. By four men.

Q. Do you recall how many men were working in the field before the increase in the hours became effective?

A. I think there were, including myself, probably 27 or 28.

Q. And, excluding yourself and, say, the clerks, it would be about 26 in the field?

A. I believe that is right.

Q. So it was necessary on account of the increase in hours to reduce the field working force from 26 to 22?

A. Yes, sir, that is right.

Q. Had there been a change progressively in the field in the way of transferring powers from individual powers to centralized powers?

A. Yes, sir, that had been going on for several years.

Q. And what was the effect of that on the number of men necessary to be employed in the field?

A. Well, it was greatly lessening the number of men that were actually needed to run the field.

[fol. 1200] Q. Do you recall any conference that you had with Mr. Shannon and Mr. Thomas along about the first of April, 1936, with reference to transferring of men?

A. Yes, sir.

Q. From Big Muddy?

A. Yes, sir.

Q. Am I right in stating it was along about the first of April, 1936?

A. It was either the first of April or a day or two before that, I don't remember just when it was.

Q. And where was that conference held?

A. At the Big Muddy Field.

Q. And who was at the conference?

A. Mr. Thomas, Mr. Shannon and myself.

Q. Will you state what conversation you had, and what Mr. Shannon told you or Mr. Thomas, or both of you, at that time?

A. Well, Mr. Shannon notified me that Lance Creek had gone on a 48 hour week the month before, and that Salt

Creek was going on, on the first of April, and that there was a good possibility that Big Muddy would be going on by the first of May and—do you want me to continue on with that?

Q. Yes.

A. And at that time he thought that it would figure out possibly that we would have to reduce our force by about four men, and he wanted us, Mr. Thomas and I, to give him his recommendations on the four men that we could best spare.

Q. Give him whose recommendations?

A. Mr. Thomas and myself.

Q. Was there any conversation about discharging men, four men, or was it about transferring them?

A. He stated there would be no discharges, that we would try to take care of them all by transfers.

Q. Well, what did you do, and Mr. Thomas do, after Mr. Shannon made that statement to you?

A. Well, I think possibly that Mr. Thomas and I had talked it over some before, possibly had heard rumors about this 48 hour week stuff, and knew that it would possibly cause us to cut down in numbers, and I think that we had talked about it enough that before the conference was over [fol. 1201] with Mr. Shannon, that we gave him our recommendations right there.

Q. What recommendations did you give Mr. Shannon?

A. As to the four men we could best spare?

Q. Yes.

A. Mr. Jones, Mr. Moore, Mr. Jackson and Mr. Whitlock.

Q. Was there any further conversation at that time as to what would be done with those four men whose names you gave Mr. Shannon?

A. Well, Mr. Shannon stated at that time, I believe, and I think Mr. Thomas had knowledge of it, that some time during the month of April, there were two men in Salt Creek who would be leaving there. I think one man was compelled to go to Kansas, and another man was resigning to go in business for himself, and I think at that time it was decided that possibly two of these four could be taken care of within the district, and that jobs for the other two would have to be found somewhere else.

Q. Well, was there any discussion then as to which two men, jobs would be available for in Salt Creek?

A. Yes, sir, there was.

Q. Well, what was that discussion?

A. Well, it was assumed at that time that Jackson and Whitlock would satisfy Mr. Bowen.

Q. Who is Mr. Bowen?

A. He was production foreman at Salt Creek Field at that time.

Q. Was there then a discussion about sending these two men to Salt Creek?

A. Yes, sir.

Q. Did these two men eventually go to Salt Creek?

A. No, sir, they didn't. One man did, but the other one didn't.

Q. Which man did?

A. Mr. Jackson.

Q. And Whitlock didn't go?

A. No, sir.

Q. Why didn't Whitlock go?

A. Mr. Bowen didn't care to accept him.

[fol. 1202] Q. What further did you have to do with the transfers of any of these four men, after that conference?

A. Well, when Bowen refused Mr. Whitlock for Salt Creek, I decided that I could spare Mr. Canning, and he was agreeable to Mr. Bowen, so those were the two men picked for Salt Creek, and in the meantime I had understood that Mr. Shannon was trying to get jobs for Mr. Jones and Mr. Moore.

Q. Now, you stated you were asked to, on the basis of Mr. Shannon's request, you gave him, you and Mr. Thomas gave him the names of four men you thought you could best spare from your organization. What do you mean by those words "you thought you could best spare"?

A. Well, I guess another name would be the least efficient.

Q. Well, you mean to state that the reason you thought you could best spare them was because you picked out the four men you thought were the least efficient?

A. Yes, sir.

Q. Well, what reason did you have to come to the conclusion that these men were the four least efficient, so that you could best spare them?

A. From their general all-around ability on the jobs that they were holding at that time.

Q. Well, now, Mr. Jones was a pumper, wasn't he?

A. Yes, sir.



Q. You had observed his pumping for how many years?

A. Well, I think he had been pumping for five or six years, possibly.

Q. And you had observed him during those five or six years?

A. Yes, sir.

Q. And how long had you been observing the pumping being done by other pumpers in the field?

A. Well, there were men there that had been on their leases which they were pumping possibly for 15 years.

Q. So you picked out Mr. Jones as being the one you could best spare because you thought he was the least efficient among the pumpers?

A. Yes, sir.

[fol. 1203] Q. Why did you want to pick out and recommend for transfer to Mr. Shannon, men you thought were the least efficient?

A. Because I wanted an organization that would do me the most good, that would keep my properties in the best shape.

Q. What was the character of Mr. Jones' work, which caused you to conclude that he was the least efficient?

A. Well, there were continually things coming up that I had to talk to Mr. Jones about. He had to be disciplined quite often, and he didn't seem to take much interest in his work.

Q. Can you elaborate on that a little further, Mr. Bartels?

A. Well, I heard Mr. Jones testify here, and he named a number of occasions that him and I had run-ins about the way he done his work.

Q. Well, supposing you go over a few of those run-ins that you say you had.

A. Well, he told about the time I jumped onto him about his engines not being clean, and he says that he told me at the time that the engines were in such shape that they couldn't be kept clean. Well, I knew that wasn't true, because his engines were as good as anybody else's in the field, and they were kept clean.

Q. Was that the only one instance that there ever was any question about his keeping his engines clean? The one he mentioned?

A. No, I saw Mr. Jones quite often and had to talk to him about his engines. I just mentioned that one case because he had brought it up himself.

Q. Now, the other instance that Mr. Jones volunteered, mentioned?

A. Well, he told about the time that I jumped onto him about an engine being down, a well being down, and he said that I fired him for it.

Q. What do you mean by a well being down?

A. Not running, not pumping. And he seemed to think that the reason the well was down was because the water tank was leaking, and it was well known to me that the water tank did leak some, but it was also well known to me that the well ran indefinitely even though the tank was leaking. All that would have to be done, it would have had to be filled a little oftener. Do you want me to tell about that occasion in full?

[fol. 1204] Q. Well, is there any particular variance in what happened with what Mr. Jones stated?

A. Yes sir, quite a bit.

Q. You might state your understanding of it.

A. Well, to start with—

Q. I would suggest this, that you do not talk quite so fast, I am afraid the reporter will not be able to get it.

A. I went past this well, it is Well No. 37 on the R. B. Whiteside Lease, about 11 o'clock in the forenoon, and I saw the well wasn't running. I went to look for Mr. Jones, and found him at Well No. 15 on the Glenrock Sheep Lease.

Q. Keep your hands away from your mouth, please, so the reporter can get your words.

A. I found Mr. Jones at Sheep 15. At this well also I found one of the gangs working, and the first thing I asked Mr. Jones if he knew 37 was down, and why it wasn't running, and he said he didn't know it was down, and I told him he had better go up and start it. Before I left there I told the gang about a job I wanted done on another lease in the field, the A. E. Humphrey Lease, and I left them, and I supposed Mr. Jones would go up and start 37, the well I had told him about on his lease, and I think I went to Casper that afternoon and didn't come back to check to see whether or not Mr. Jones had started this particular well, and the next morning on my first trip through the field I saw that the well was still down, and Mr. Jones was going over toward it, or maybe that isn't right, maybe he was there at the well when I got there, but anyway I asked him if the well had been down all night, and he said yes, and I asked him why and he

said that he understood me to tell the gang who were down at Sheep 15 the morning before to go start the well, and that is when the big argument with Mr. Jones started about him being fired that morning. I told him that I thought I would go up to the office and get his time check, and after thinking it over later in the day, I went down to his lease and found him at his boilerhouse, and told him that I had not brought his time check, that I had sort of cooled off, and that I thought if he would take more interest in his work, that maybe him and I could get along.

Q. Now, there was some incident about a fire. What was that?

A. The fire that Mr. Jones mentioned in his testimony [fol. 1205] was at Well No. 19 on the R. B. Whiteside Lease. I believe it was in the month of January.

Q. Of what year?

A. Of '36.

Trial Examiner Holden: The year, please.

A. Of '36. This fire started, we were notified about it, and everybody that was around went down to help put it out, and Mr. Thomas was there, and Mr. Thomas asked Mr. Jones how the fire started.

Q. Now, just a minute. Was that on a well that was in charge of Mr. Jones?

A. Yes sir, it was a well that Mr. Jones was pumping that morning, and he told Mr. Thomas he didn't know, and after the excitement was over, the fire was out, I asked Mr. Jones how it started, and he told me he didn't know, and it was either that evening or the next day that I went back to talk to Mr. Jones again, and told him I would like to have him tell me the straight story about how that fire started, and he said, "Well, I'll tell you how I think it started", but he said, "I wouldn't tell Jack Thomas." He told me then that he thought it had started from some rags that he had in his pocket which had caught fire while he was warming up the engine; in warming up the engine he was getting it ready to start, and that later on these rags were still burning as he walked out on the derrick floor and the burning rag dropped on the derrick floor, and started the fire.

Q. Is a fire a dangerous thing around an oil well?

A. Yes sir, it is. Yes sir.

Q. Well, what might happen?

A. Well, if we hadn't got there it probably would have



burned the rig down, also the engine house, and the band wheel house.

Q. Have you ever had any other fires in that field since you have been foreman?

A. Yes, I have had one, I believe.

Q. They are not a matter of common occurrence?

A. No, they are not.

Q. Mr. Jones was the only man who was around the well, was he?

A. Yes sir.

[fol. 1206] Q. Around this particular well at this time?

A. Yes sir.

Q. Do you recall any other particular instance that Mr. Jones has not mentioned?

A. No, I don't recall any now, although there were a number of them.

Q. How often a day would you get around the field, and around where Mr. Jones was working, and the other men in the field were working, to observe how they were working?

A. Several times a day.

Q. For how many years did you do that?

A. Starting when, when do you mean?

Q. Well, you did it for about three years as foreman, didn't you?

A. Yes sir.

Q. Before that time?

A. Well, I was pipeline gauger, while I was pipeline gauger I would look over the leases at least once a day, sometimes twice a day.

Q. And how long did you do that?

A. Two or three years.

Q. That was before you were foreman?

A. Yes sir.

Q. What was Mr. Jones' general approach to working steady on the job as the other workmen did?

A. What is that question, please?

Q. You have heard of what is called soldiering on the job, have you? Was Mr. Jones guilty of that?

A. Well, I would say that he wasn't a good steady workman.

Q. What was his attitude toward getting to work on time, or leaving earlier than he was supposed to?

A. I had to speak to him several times about getting to work on time.

Q. He works out in the field some distance from the office, doesn't he?

A. Yes, about two miles.

Q. Is it possible for the foreman to always know just when the workmen does get over to his wells, and leaves them?  
[fol. 1207] A. No sir, it isn't.

Q. Did you have knowledge of Mr. Jones' accident and sickness record?

A. Yes sir.

Q. What did you know about that?

A. Well, I had possibly written up most of the accident reports for him during the time that I was clerking and gauging.

Q. Which would be at all times when Mr. Jones was in the field, wouldn't it?

A. Yes, sir.

Q. How did that accident record, or sickness record, compare with others who were in the field at the time of these transfers?

A. Well, I think that Mr. Jones had the poorest accident record of any man in the field.

Q. Did you have equal knowledge of the working ability of all the other pumpers in the field that you did of Mr. Jones?

A. Yes sir.

Q. Was it upon the basis of the knowledge you had of all the pumpers in the field that you concluded to recommend Mr. Jones as one of the men to be transferred?

A. Yes sir.

Q. Now, how did you come to include Mr. Moore in your recommendation?

A. For the same reason I did Mr. Jones. I considered him one of my least efficient men.

Q. Did you know how old a man Mr. Moore was?

A. Yes sir.

Q. How old was he?

A. I knew he was in his early fifties.

Q. What was his working ability, say, as to strength and ability to get around?

A. Well, I wouldn't say that he was as active as most of the other roustabouts that we had.

Q. Was he the oldest in years of the roustabouts?

A. Yes sir, I think he was.

Q. From your experience, can you state whether a man's working ability as a roustabout decreases when he gets above 50?

[fol. 1208] A. I would say that it would, yes.

Q. Were you in the field when Mr. Moore was doing work other than roustabout work?

A. Yes sir.

Q. Were you there when he was doing tool dressing?

A. Yes sir.

Q. Did you observe his ability as a tool dresser?

A. Yes sir.

Q. What was it, as compared to his ability as a roustabout?

A. Well, I think that on a cleanup string of tools Mr. Moore got by very nicely as a tool dresser.

Q. And how long since he had done any such work in Big Muddy?

A. He hadn't done any since I was foreman, I don't believe.

Q. Was there any drilling going on since that time?

A. No, there was not.

Q. Was there any prospect there would be any further work at which tool dressing would be required?

A. No sir.

Q. Can you give any details as to why you considered Mr. Moore the least efficient, or among the least efficient of your roustabouts?

A. Well, by my own observations, as well as records of my head roustabouts.

Q. Well, were there any particular instances that you could refer to such as you did with reference to Mr. Jones?

A. No, I don't believe so, except that I had many reports from my head roustabouts as to his ability on the roustabout gang.

Q. And what were those reports?

A. Well, they were to the effect that he soldiered on the job, done as little work as he could, and sort of relied on the other men to carry him.

Q. And what effect would that have upon properly performing the work that the head roustabout would be in charge of to do?

A. Well, it would more or less slow up the work of the whole gang.



Q. Did Mr. Thomas himself work in Big Muddy field, to your knowledge, before he became district superintendent?  
[fol. 1209] A. Yes sir. Yes, he did.

Q. And what time did he work in the field?

A. I think Mr. Thomas was field foreman there from 1925 until 1933.

Q. Did you succeed him as field foreman?

A. Yes sir.

Q. Did you work under Mr. Thomas then from 1925 until 1933?

A. Yes sir.

Q. Did Mr. Thomas have the same opportunity to observe the workmen in the field, including Jones and Moore, while he was foreman, as you did since you became foreman?

A. Yes sir.

Q. And since Mr. Thomas became district foreman in 1933 what opportunity has he had to observe the workmen in the Big Muddy field?

A. Well, possibly more than in any other field, because his headquarters were still maintained in Big Muddy.

Q. He worked out of Big Muddy for his entire district?

A. Yes sir.

Q. And is his home in the Big Muddy field?

A. Yes sir, his home is in Big Muddy.

Q. And your home is there?

A. It was, yes.

Q. Before you were transferred to Salt Creek?

A. Salt Creek, yes sir.

Q. Now, Mr. Bartels, you knew, I assume, there were a number of the employees of the Big Muddy field who were members of the local Union?

A. Yes sir, I did.

Q. You knew, did you not, that Mr. Moore and Mr. Jones were members of the Working Committee of that Union?

A. Yes sir.

Q. Have you, Mr. Shannon, and Mr. Thomas, met from time to time with that Working Committee?

A. Yes sir.

Q. Were there other members of that Working Committee from time to time?

A. Yes sir, there were.

[fol. 1210] Q. Who were they?

A. Well, I think the first committee I ever met with was Mr. Jones and Mr. Simon, and Mr. Shafer.

Q. And when was that?

A. I think that was in 1934. And later on, if I remember correctly, there was a man by the name of Bormuth on the Committee.

Q. Did you know the president of the Union, who the president of the Union was?

A. Yes sir.

Q. Who was he?

A. Charles N. Erwin.

Q. Had the Union list ever been furnished you, or how did you know that these men were Union members?

A. Why, there were men that joined the Union and dropped out at all times, but there was much of the time that I had a pretty fair idea who were Union men and who were not. They weren't afraid to tell me whether they were or whether they were not.

Q. It was a matter of general knowledge around the field, wasn't it?

A. Yes, I believe it was.

Q. Did you know then whether the other two men besides Jones and Moore were or were not members of the Union at the time they were recommended for transfer?

A. I believe that Simon and Bormuth still were.

Q. I don't mean them, but that would be Jackson and Whitlock, wasn't it?

Mr. Shaw: Canning?

Q. Jackson and Canning?

A. Jackson and Whitlock originally wasn't on it. One of them was a substitute later for Canning, Canning was substituted.

Mr. Shaw: For Whitlock.

Q. For Whitlock?

A. I don't believe at the time I gave it any thought, whether they were or not.

Q. Well, did you know at that time whether they were or were not, Union men?

[fol. 1211] A. No, I can't say that I did know for sure at that time.

Q. But you did know that Jones and Moore were?

A. Yes, sir.

Q. Well, what consideration, if any, in making your recommendations to Mr. Shannon for the transfer, did you

give to the fact that Jones and Moore were members of the Union?

A. I didn't take Union ideas into mind one way or the other at all in picking these men for transfer.

Q. Did the fact that they were members of the Union influence you in any way in recommending their transfer?

A. No, sir.

Q. In considering the efficiency of the operations in the Big Muddy field in which you were in charge as foreman, did it make any difference to you whether the men transferred were or were not Union men?

A. Will you read that question, please?

(Question read by reporter.)

A. No, sir, it made no difference.

Q. Did it make any difference to you in considering the efficiency of the field for which you were held responsible that Jones and Moore were members of the Workmen's Committee?

A. No, sir.

Q. Was it your understanding that there were other members of the Union in addition to Jones and Moore still left in the field?

A. Yes, sir.

Q. Was there any discussion between you and Mr. Thomas in which the fact that these two men, Jones and Moore, were Union members, entered into your recommendation to Mr. Shannon, to be included as two of the four to be transferred?

A. No, sir. Mr. Shannon, Mr. Thomas and I talked only of efficiency, not of whether they were Union men or non-Union men.

Q. How often since you first met with Mr. Jones and Mr. Moore as two of the Union Committee, which I believe you said was in 1934, would you say that you saw Jones and Moore, up until the time they were recommended for transfer.

A. Oh, sometimes I may not see them for a day or two, and then I may see them a dozen times a day for a week. [fol. 1212] Q. Now, you saw them some several hundred times from that time on didn't you?

A. I imagine so.

Q. Mr. Jones, while on the witness stand, indicated that out of these several hundred times, on one or two or three



occasions that you made some reference to him with reference to his Union activities. Did you ever make any statements to Mr. Jones such as he testified to on the stand, indicating any criticism of his Union connection or activities?

A. No, sir, I didn't.

Q. Did you ever make any statement to Mr. Moore criticizing or reflecting upon, or indicating any criticism of his Union connection or activities?

A. No, sir.

Q. You knew Mr. Jones was active in Union affairs, did you not, at the time you told him you would get him his pay check, and then cooled off and changed your mind?

A. Yes, sir.

Q. You had plenty of opportunity in your mind at that time to discharge him, did you not?

A. Yes sir, I had a very good reason to if I had wanted to have gone through with it.

Q. And you knew, did you not, of his Union activities, and committee work, at the time of the fire?

A. Yes, sir.

Q. In January of 1936?

A. Yes, sir.

Q. And did you know of it at the time of the other incidents that have been mentioned here?

A. Yes sir.

Q. When the well was shut down?

A. Yes sir.

Q. And you knew at all times since 1934 of Mr. Moore's Union activities?

A. Yes sir.

Q. Did you likewise know of the Union activities of Mr. Erwin, the president?

A. Yes sir.

Q. You did not recommend Mr. Erwin for transfer, did you?

[fol. 1213] A. No sir, I didn't.

Q. And why would you say you didn't recommend Mr. Erwin for transfer?

A. Because he was a good workman, and I wanted to keep him in my organization.

Q. Were there other men that you knew or thought were Union men, that you did not recommend for transfer?

A. Yes sir.

Q. And why did you not recommend them in lieu of the four you did recommend?

A. For the same reason that I did not recommend Mr. Erwin, that I wanted to keep them to maintain an efficient organization.

Q. Now, you stated that it was generally known and discussed around the field who were and who were not Union men?

A. Yes, it was talked of a good deal, I suppose.

Q. And was there, did there seem to be any hesitation among the men in letting you know they were Union men or non-Union men?

A. No.

Q. And would that hold true as to Moore and Jones, that you would have discussed with them about the Union?

A. Yes sir.

Q. And their activities?

A. Yes sir.

Q. Was there ever anything said to you by Moore or Jones, or any other Union man or representative, that you had spoken to Moore or Jones in any manner that reflected upon the Union, or their Union activities?

A. No sir.

Q. Did you hear Mr. Jones' testimony about some statements which he says you made to him with reference to the Union?

A. Yes sir, I heard a few little remarks that he said that I stated. I don't think that he said that I ever took an opportunity to try to keep him from joining the Union, or belonging to it.

Q. Did you ever have any more than a casual conversation with Mr. Jones about his Union activities, which apparently were open to everybody?

[fol. 1214] A. No, no more than that.

Q. I don't recall without recourse to the transcript the particular statements that Mr. Jones says you made. Do you recall what they were?

A. Well, he said that I at one time told him that it looked like the Union were giving me a ribbing. If I made a remark like that it probably was estimating that Mr. Jones by his attitude was sort of expecting his being a member of the Union to hold his job for him, instead of his work, the quality of his work.

Q. Was there any criticism of whatever was stated, from Jones to you, on account of whatever you didn't state?

A. No, he didn't make any answer to it, as I remember.

Q. Are you positive, Mr. Bartels, and will you so state, whether or not you are positive, that Mr. Jones' and Mr. Moore's Union connections or activities had nothing to do with your inclusion of their names among the four which you recommended to Mr. Shannon for transfer?

A. I will state that their Union activities had nothing to do with my recommendation.

Mr. Akolt: I think that is all, Mr. Shaw.

### Cross-examination.

By Mr. Shaw:

Q. Now, as I understand it, Mr. Bartels, prior to your becoming a foreman at the field in Big Muddy, you were neither a pumper nor a roustabout?

A. That is correct.

Q. You never had any experience in either one of those fields, is that right?

A. As a pumper or roustabout?

Q. Yes.

A. No sir, I never did.

Q. Now, this conference occurring about the first of April, at that time Mr. Shannon told you you were to pick out the 4 men you could best spare. Right?

A. Well, I don't know as he said the men we could best spare. He told us to pick out four men that we would recommend to him for transfer, that we thought we could best get along without, yes.

Q. Well, then, he did say 4 men you could best spare, or substantially that?

[fol. 1215] A. Maybe words to that effect.

Q. In other words, your 4 most inefficient men, as you later stated?

A. Yes sir.

Q. Now, what is the rating among the 4, who is the least efficient of the 4? Who is the first man you named?

A. I don't know whether I ever considered it down to those fine points or not.

Q. Well, how did you, can you consider it down to that fine point?



A. No, I don't believe we can, because the men were not working in the same positions.

Q. Now, three of the men you named were pumpers, weren't they?

A. Yes sir.

Q. One was a roustabout?

A. Yes sir.

Q. Well, who were the two men that were named first?

A. I don't remember.

Q. Did Mr. Shannon tell you on what particular bases you should work with regard to choosing these four men?

A. Well, he told us that we should pick the 4 men that were doing us the least good, as far as their work was concerned.

Q. Seniority wasn't to enter into that, at all?

A. I don't think seniority was talked of.

Q. The accident or medical record wasn't to enter into that, was it?

A. I don't think Mr. Shannon mentioned it, but Mr. Thomas and I possibly considered it.

Q. Well now, how did you come to think of three pumpers and one roustabout, why not three roustabouts and one pumper?

A. Because, in picking the four men that was the way they happened to fall.

Q. Those were the chips as they fell?

A. Yes sir.

Q. Did Mr. Shannon say anything to you about transferring pumpers rather than roustabouts, or roustabouts rather than pumpers?

[fol. 1216] A. No sir.

Q. You had been talking this over, you and Mr. Thomas, before, so that you were able to give a ready, quick answer that day to Mr. Shannon?

A. No, I don't think that we gave a ready, quick answer.

Q. I thought you said you were able to give him an answer right away.

A. I said I thought we were able to tell him before he left the field that day.

Q. That day?

A. Yes sir.

Q. But you had been having some conferences before on this matter, hadn't you?

A. Yes sir.

Q. When did these conferences start?

A. Oh, possibly several weeks, maybe two or three weeks.

Q. In other words, about the first week in March, is that right?

A. I imagine so.

Q. And you had been anticipating that sooner or later Big Muddy was going on a 48 hour week, is that right?

A. We had thought there might be a good chance that it would, yes.

Q. And you had been anticipating that that would mean a reduction of force?

A. Yes sir.

Q. How many men did you anticipate that would necessitate?

A. Well, I think it was thought right along that it would take three or four, possibly five.

Q. And you had your four men all selected, did you?

A. No, I don't know as we did.

Q. Well, you had some of them selected, didn't you?

A. We had never come down to the point of actually selecting. We had talked over different ones.

Q. Well, whom did you talk over?

A. I don't remember now, exactly.

Q. Well, had you talked over Jones?

A. Yes sir.

[fol. 1217] Q. Did you talk over Moore?

A. Yes sir.

Q. Jackson?

A. Yes sir.

Q. Whitlock?

A. Yes sir.

Q. Canning?

A. Yes sir.

Q. So you had talked them all over then, hadn't you?

A. Yes sir.

Q. Now, you said at that meeting it was deemed that Jackson and Whitlock would satisfy Mr. Bowen, is that right?

A. Yes sir.

Q. Now, what was the basis of your anticipated satisfaction of Mr. Bowen?

A. Why, as to the work they could do.

Q. Well, why wouldn't Jones and Moore satisfy Mr. Bowen?

A. I think Mr. Bowen had probably been approached on

the subject before, about taking Mr. Moore and Mr. Jones off our hands.

Q. When was that, do you know?

A. 'About the time the things was talked of to start with.

Q. When was that?

A. Oh, I would say within a 30 day period, sometime during the month of March.

Q. Well, who took it up with Mr. Bowen at that time?

A. Well, Mr. Bowen and I saw each other quite frequently, and probably talked these things over.

Trial Examiner Holden: May the testimony be limited to the witness' knowledge. If he doesn't know let's not have him testify. It is confusing to have "probably", and "possibly", in the record, concerning some of these points.

Q. Well, did you talk to Mr. Bowen about Moore and Jones, or not?

A. I wouldn't say that I ever talked to him about Jones. I believe I did talk to him once about Mr. Moore.

Q. What was that talk about?

A. I asked him if he would be interested in trading men [fol. 1218] some time, that I had a roustabout that I would like to get rid of.

Q. What did he say?

A. No, he wasn't interested.

Q. Well, did he know anything about the name of the man?

A. He knew Mr. Moore personally, I think.

Q. Had he been in Big Muddy?

A. Well, he had passed back and forth in there for a long time.

Q. Well, you weren't very encouraging about Mr. Moore's qualifications when you said, "I have a man I want to get rid of", were you?

A. I don't know as I put it in those words.

Q. What words did you put it in, do you know?

A. I don't remember, no.

Q. Now, in reducing your force in Big Muddy, wouldn't it cripple your operations to take 3 pumpers away from you?

A. No sir.

Q. Did you have to make a roustabout into a pumper?

A. I don't recall whether we did or not, but it was a common occurrence to do that. I had a number of pumpers,



Q. Who stepped into the Jones job?

A. I don't remember at this time.

Q. You mean you don't know who took that job?

A. No sir.

Q. You are around that field all of the time, and you mean to say you don't remember who took that job?

A. I don't remember at this particular time, no. There was a number of changes going on at that time, and just who done the work that Mr. Jones had been doing I couldn't tell you now.

Q. You couldn't tell me now?

A. No sir, I think the work that he was doing was split up, possibly, among two men.

Q. Were any men made pumpers who had been roustabouts, as a result of this change?

A. I think possibly one.

Q. Who was that?

[fol. 1219] A. I don't remember who the man was now.

Q. Mr. O'Neal, wasn't it?

A. It could have been, yes.

Q. Well, was it?

A. I believe it was.

Q. You heard a lot about the reputation of the men in the field concerning their Union activities, you knew that O'Neal was a strong anti-Union man, didn't you?

A. No sir, I didn't know that.

Q. Well, how did you know about the fellows that were pro-Union, and didn't know about the fellows who were anti-Union?

A. I might have known that he was not a Union man. I didn't know that he was a strong anti-Union man.

Q. You found that out later on, didn't you?

A. No sir.

Q. Didn't you find out later he was the man who organized the Independent Association in the field?

A. I heard later that he was interested in it, yes.

Q. Well, now, Mr. Bartels, how long had Mr. O'Neal worked as roustabout out there?

A. Oh, I think he had had that, the last time he had worked there was about a year.

Q. Just about a year?

A. Yes sir.

Q. Mr. Jones had worked quite a number of years, hadn't he?

A. Yes sir.

Q. Is there any feeling on your part that a man that has worked there a long time in the service of the company is worth more to the company?

A. It depends on the man a whole lot.

Q. Well, here was a man who had worked for you a year, and you made him into a pumper, after getting rid of a man who had had a long experience as a pumper, isn't that true?

A. Yes sir, that is true.

Q. Well, now, didn't you have something of an investment in Mr. Jones in connection with the experience he had received?

A. It sure wasn't paying dividends if we did have.

[fol. 122b] Q. Some investments, don't, Mr. Bartels.

A. That is right.

Q. You never thought of it that way?

A. No sir.

Q. It never occurred to you?

A. No sir.

Q. Now, you said that Jones and Moore were probably the two least efficient men in the field?

A. Yes sir.

Q. Do you have any charts of efficiency, or anything like that?

A. No sir.

Q. Do you know what goes into your mind, what factors go into your mind to determine efficiency?

A. Yes, I do.

Q. Well, what are they?

A. Well, general ability and willingness to work; how they get along with the men who work with them. There is a lot of things like that.

Q. Well, what about Jones' ability, did Jones have general ability?

A. I would say that Jones had quite a bit of ability if he really exercised himself and tried to use it.

Q. Well, he has general ability then, he satisfies that requirement. Right?

A. Well, I don't know whether I would say yes to that or not. If a man has ability and doesn't try to use it. I wouldn't say that he had ability as far as I was concerned.

Q. Your logic is better than mine, Mr. Bartels. You had no doubt that Jones had the ability to work if he wanted to, did you?

A. Yes, that is true.

Q. Alright. Now, on the question of getting along with the other men, couldn't he get along with the other men?

A. He wasn't at all popular with the rest of the men, no.

Q. How did you find that out?

A. I knew that for a long time.

Q. The other men didn't like him?

A. No.

[fol. 1221] Q. Was that one of the reasons why you considered him one of the least efficient men in the field?

A. No, I wouldn't say exactly. That would be a very small part of it.

Q. That entered into your definition a moment ago, isn't that true?

A. Yes sir.

Q. So that was one of your factors for choosing Mr. Jones as one of the least efficient men, was it not?

A. I said that it might have taken a very small part.

Q. Well, how do you know what goes on in your mind, Mr. Bartels, as to whether it is important or small, in regard to how it affects your decision?

A. Well it is my own idea, that is all.

Q. Well, what was the big objection to Jones, that he didn't work, or what?

A. That was one of the objections, yes.

Q. Well, what were the other objections?

A. That he wasn't interested in his work and didn't try to run a lease like a good pumper should.

Q. What do you mean by "interested in his work"? How do you know when a man is interested in his work? What does he do? How does he go about it?

A. All you have got to do is ride over his lease once and you can tell.

Q. And if you see things well maintained you naturally think he is interested in his work?

A. Yes.

Q. Now, wasn't Jones' lease well maintained?

A. No, it wasn't.

Q. How long had this condition of bad maintainence of Jones' lease gone on?

A. Well, Jones had only worked for me about two years and a half at the date this came up.



Q. Well, had it been that way for two years and a half?

A. Yes sir, it had.

Q. And had it been that way before that time, when you were a pipeline gauger?

A. What little notice I took of the leases at that time, yes, it had to some extent.

[fol. 1222] Q. Now, what did you notice, what specific details of maintenance did you notice? Weren't things painted, or was grease lying around, or what?

A. Well, everything in general wasn't as neat as it should have been.

Q. Well, let's be specific rather than general.

A. There is a lot of things on a lease that could be right or wrong.

Q. What are those things?

A. Well, dirty engines, dirty tanks.

Trial Examiner Holden: Can we confine ourselves to the things which actually were wrong?

Mr. Shaw: I think so.

Q. I am talking about things that were actually wrong with Jones' lease.

A. Dirty engines, and dirty tanks, and dirty derrick floors. Weeds not cut properly.

Q. You mean they were cut, but not cut properly?

A. Well, I would say that the space they were cut didn't cover enough ground.

Q. Anything else wrong with Jones' lease?

A. Well, he wasn't interested in keeping the wells running the proper length of time.

Q. The wells didn't run long enough, right?

A. You can put it that way if you want to.

Q. How long were they supposed to run?

A. There is very few wells in an oil field that run the same length of time. Some of them run 2 hours, some of them 24 hours.

Q. How long were his wells supposed to run, and how long did they run?

A. I don't remember. That is asking too much. I have handled a lot of oil wells before and since, and I can't remember how long each one should run.

Q. Well, dirty engines. Did anybody else have any dirty engines at any time?

A. Yes, occasionally.

Q. That happened to almost everybody, didn't it?

A. Once in a while, probably, although I don't know, there [fol. 1223] may have been some pumpers I never did catch with a dirty engine.

Q. Now, what about dirty tanks. Did anybody else have a dirty tank on the lease?

A. I suppose they did once in a while, some of them did.

Q. Not only Jones, but others, right?

A. Yes sir.

Q. What about dirty derrick floors?

A. Well, I suppose there were times when you would catch anybody with a dirty derrick floor.

Q. What about weeds not cut properly? Did other people have weeds not cut properly?

A. I think most of the pumpers kept their weeds cut better than Jones did.

Q. Jones was the worst on the weeds, right?

A. Yes sir.

Q. Now, what about the wells not running long enough, did other pumpers have that trouble too?

A. I suppose they did once in a while.

Q. Who was the judge of whether the wells were running long enough?

A. I was.

Q. And how did you know how much each well was supposed to run?

A. How did I know it?

Q. Yes.

A. Well, that is what I was getting paid for to find out.

Q. Well, did you find on very many occasions that Jones' wells were not running long enough?

A. I told about one time. That well was down for 20 hours at one time without running.

Q. Well, that has happened to other people, hasn't it?

A. No.

Q. Never before?

A. No sir.

Q. And that is the time you fired Mr. Jones, and then changed your mind?

A. That is the time he said I fired him, yes.

[fol. 1224] Q. Well, you said you were going down to get his time, didn't you?

A. Yes sir.

Q. Well, what does that mean to a worker?

A. Well, I guess it means he thinks he is fired, for the time being.

Q. As far as he is concerned that is all that is necessary isn't it?

A. Yes sir.

Q. Alright, you left Mr. Jones with the impression that he was about to be discharged, did you not?

A. That is right.

Q. Why didn't you go through with it?

A. Because I hated to see the man lose his job.

Q. Just charity, or what?

A. Well, that probably would be a good name for it.

Q. Now, there were plenty of those things about dirty engines, dirty tanks, and dirty derrick floors, and weeds not cut properly, and wells not running long enough, all those things were present at this time, weren't they, at the time you gave him the impression that he was about to be discharged?

A. Well, they would show up from time to time. I don't say that they were that way continually twenty four hours a day, or 365 days a year.

Q. Well, I mean all those troubles with Jones' work were present at that time?

A. Yes sir.

Q. Did you think that Jones was a valuable man at that time?

A. No, sir, I didn't.

Q. It was just plain charity?

A. No, I wouldn't put it that way exactly.

Q. Well, what else entered into the reason why you didn't discharge him at that time?

A. Because I hated to see the man lose his job. It is pretty hard to get up and fire a man when you think that.

Q. Well, you had had instructions, did you not, that if the men were not performing their work properly they should be discharged?

A. I never fired a man, since I was foreman.

[fol. 1225] Q. You didn't carry out those orders?

A. No.

Q. You never had cause to, is that right?

A. I said I never did. There may have been occasions when I should have, but I didn't do it.



Q. Now, as I understand it there was a fire at Well 37 on the Whiteside lease.

A. Yes, sir.

Q. Jones was not fired for that?

A. No, sir, he wasn't.

Q. He had a fire on the Whiteside Lease No. 19, right?

A. Yes, sir.

Q. Was he meted out any discipline for that?

A. No, sir, he wasn't.

Q. Well, why not, do you know?

A. Because I had reached the point with Jones then that I didn't think there was any use.

Q. What do you mean by that?

A. That discipline wasn't doing him any good.

Q. Well, a man who causes fires like that is likely to be a great risk on the company, isn't he?

A. Yes, sir.

Q. Well, why wasn't he discharged?

A. For the same reason he wasn't for these other incidents, because I felt sorry for him.

Q. And you don't discharge a man out there if you feel sorry for him?

A. I said I had never discharged a man since I had been foreman.

Q. Now, about 8 months before Jones was transferred to Hobbs, New Mexico, he was a relief pumper on two leases, wasn't he?

A. Yes, sir.

Q. Now, as a relief pumper he had no charge of maintaining the lease, is that right? That is up to the regular pumper, is it not?

A. Not altogether, no.

Q. What do you mean by that?

[fol. 1226] A. I don't think for a minute that a relief pumper is just to sit down when he is relieving a regular pumper.

Q. Well, is he supposed to cut the weeds?

A. He is supposed to do anything there is to do.

Q. Well, did you notice on the particular dates that Jones was relieving, that is about two days out of the week, that the lease, when he was there, was dirtier than when other pumpers were there?

A. I noticed that I very seldom caught Mr. Jones doing anything to make the lease look better.

Q. Answer the question.

A. I don't think I can answer that question, because when a man works on a lease 5 days a week, and another man works on the lease 2 days, the result of the work that the relief pumper does can only be judged on how much work he actually attempts to do. The appearance of the lease doesn't change over night. You can't examine every single engine house on a well every day.

Q. So, since about 8 months before he was transferred, there was no question of dirty engines, dirty tanks, and dirty derrick floors, or weeds, which was put to his blame, is that right?

A. Yes, sir, there was some question about it.

Q. Well, how did you know about it?

A. Well, I never saw him doing any of it when I knew there was some to do.

Q. Well, were you standing opposite him all day long waiting for him to do it, or not?

A. No, but you can judge the work of a pumper by going on his lease two or three times a day and if he is doing anything you ought to catch him at it some time.

Q. Wasn't he working at his pump when you were there?

A. At his pump?

Q. Yes, or at the engine, or doing some other work. What was he doing when you observed him as a relief pumper during those 8 months?

A. Lots of times he wasn't doing anything.

Q. And lots of times lots of people, you see on other leases, aren't doing anything, isn't that true?

A. Yes, that is true to some extent.

[fol. 1227] Q. Now, did you speak to him on those occasions?

A. Yes, sir, I did on several occasions, I think. I didn't make it a practice of running around and chewing on him every day.

Q. Well, I don't mean necessarily chewing, I mean did you threaten him with discharge or threaten to discipline him, unless you found him at work the next time you came around?

A. I don't think I ever threatened to discharge him for it, no.

Q. Did you ever threaten to discipline him?

A. I think I did discipline him, I didn't just threaten to.

Q. You mean the time you gave him the impression you were going to discharge him?

A. No, on other occasions.

Q. What kind of discipline did you mete out to him?

A. Just told him that he would have to get to work.

Q. Well, did you ever lay him off for two or three days, or anything like that?

A. No, sir, we don't do that.

Q. You never did that?

A. No.

Q. What disciplinary measures do you have at the field, outside of discharge or transfers?

A. That is all.

Mr. Shaw: It is after 5. I am sure that I cannot finish with this witness. I think we shall have to adjourn until tomorrow morning.

Trial Examiner Holden: The meeting is adjourned until 9:30 tomorrow morning.

(Thereupon at 5:05 P. M. the hearing adjourned until 9:30, March 16.)

City Council Chambers, Casper, Wyo.

March 16, 1938. 9:30 A. M.

The above-entitled matters, consolidated for the purpose of hearing, came on to be heard, pursuant to adjournment, at 9:30 A. M.

### Proceedings

Trial Examiner Holden: The hearing is in session.

[fol. 1228] R. C. BARTELS, having been previously sworn, resumed the stand and testified further as follows:

Cross-examination (continued.)

By Mr. Shaw:

Q. Mr. Bartels, I understand that there was another fire out there at the place, at the Big Muddy field, that you knew about.

A. Than the fire I told about yesterday?



Q. Yes.

A. Yes, sir.

Q. Who was responsible for that fire?

A. No one that we knew of. It happened while, after working hours. No one was on duty.

Q. Whose lease was it on, do you know?

A. I think it was on Pearl Bonderant's, I am not sure who was pumping that lease at that time, although I know the well.

Q. No one was disciplined as the result of that?

A. No, sir, because we never did figure out exactly how the fire started, although it was presumed to be from a slipping belt.

Q. How did you know that Jones didn't go to work on time?

A. Because I checked up on him several times.

Q. What do you mean by that?

A. Went down to his lease when he was supposed to be there.

Q. What time in the morning did you go down there?

A. Six o'clock.

Q. What time do you normally get up?

A. All the way from 4 o'clock to 8 o'clock. I have no set time when I get up.

Q. And you found he wasn't there on time?

A. Several times I found that he wasn't there when he should have been.

Q. Did you ever check up on anybody else?

A. Yes, sir.

Q. Did you ever find that they weren't there when they should be?

[fol. 1229] A. I have found cases, yes.

Q. How did you come to check up on Jones, what led you to that?

A. I had a feeling that he wasn't getting to work on time. I asked him about it once, to see what he would say about the proposition.

Q. Didn't you discipline him when you found he wasn't getting there on time?

A. I think I did, yes.

Q. What discipline did you mete out to him?

A. I think I told him that he would have to get to work on time to get in his full six hours.

Q. Did you mete out the same discipline to other people that you found weren't there on time in the morning?

A. I usually did, yes.

Q. How long had this been going on, this getting to work late in the mornings?

A. Not very long that I knew of.

Q. Well, when did you first discover that?

A. I don't remember, that has been a long time ago.

Q. Well, how long ago?

A. Oh, it has been at least three years ago.

Q. Well, was it before he was transferred, or had it been going on since you had been foreman in 1933?

A. Well, it was some time during 1934, I believe, that this argument came up about him getting to work late.

Q. As I understand it, the head roustabout made reports to you about the work Dinty Moore was doing, and told you he was soldiering on the job, and that sort of thing?

A. Yes, sir.

Q. Do the head roustabouts normally make reports to you concerning the work of the men?

A. Yes, they do.

Q. Do they report to you on the work of the men?

A. They do to some extent, yes, sir.

Q. Do they report to you the deportment of the men, the deportment of a man while he is on the job, whether he is soldiering on the job or whether he is working well or anything like that?

[fol. 1230] A. Well, the general conditions of how a man works is made known to me by the head roustabouts.

Q. You relied on the head roustabouts for your information on the men?

A. To a certain extent, yes, sir.

Q. Do they make out written reports, or just oral reports.

A. Just oral reports.

Q. How long had you been receiving these reports from the head roustabouts that Moore was soldiering on the job?

A. Oh, it was known to me for several years.

Q. How many years?

A. Well, I would say two years. I, Moore only worked under me two and a half years, I believe.

Q. Well, you were only foreman about two and a half years before Moore was transferred, weren't you?

A. Yes, sir.

Q. Well, you had known ever since you had been foreman?

A. Practically, yes.

Q. And you heard it while you were gauger, is that right?

A. I believe so, yes.

Q. Well, nothing was ever done to Moore about that condition?

A. Oh, I think Moore was given a talking to from time to time about trying to work better.

Q. Well, did you do it?

A. Yes, sir.

Q. On how many occasions?

A. That is hard to say.

Q. Well, can you give us one occasion?

A. I don't remember any particular occasion, no.

Q. You don't remember what you told him at any time?

A. No, sir. I don't suppose I could tell you word for word what I told him.

Q. Now, had there been any other men transferred out of your field since you became foreman in 1933, up until 1936, the spring of 1936?

A. I couldn't say, I don't believe there was.

Q. Well, now, as I understand, Big Muddy was and has been for some time, a declining field?

[fol. 1231] A. Yes, sir.

Q. And that declining production has been a progressive affair, going down more and more each year, is that right?

A. It takes a little drop each year, I believe, yes.

Q. Now, that necessitates, does it not, the cutting down the number of men from time to time?

A. Yes, sir.

Q. And you say you have never fired anybody since you were foreman?

A. No, sir.

Q. Well, didn't you ever transfer anybody?

A. I think there is a difference between firing and laying a man off. I believe that I did lay one man off on account of reduction in force. He wasn't replaced.

Q. And who was that man?

A. I think his name was Stepanick.

Q. Was he an old man on the job?

A. No, I don't think he was so very old on the job. I think though there were younger men here than him at the time, in point of service.



Q: You laid him off because you thought he was inefficient or what?

A. Because he was comparatively young, and very inefficient, yes, sir, and on account of the fact that we were reducing the force, he was picked to be laid off.

Q. Now, did you ever transfer anybody to any other field, Salt Creek or Lance Creek or any other field?

A. Yes, I did, I have transferred men to Lance Creek.

Q. Now, at the time these men were transferred to Lance Creek, were you told to pick out men and transfer them?

A. I think Mr. Rice, the foreman and I, at Lance Creek talked over the men, he was acquainted with them all, and I think I told Mr. Rice we would mutually agree on a couple of men.

Q. Did you ever receive before any orders to transfer, where you were told to pick out the most inefficient men you had, to transfer them?

A. Yes, sir, I have.

Q. Told to pick out the most inefficient men?

A. Yes, sir.

[fol. 1232] Q. When was that?

A. Well, sir, since, I took charge of the Salt Creek field I had four head roustabouts, and I was told to cut down the force of head roustabouts by one, and which I did, I picked the one which I thought was the most inefficient man, and transferred him to south Texas.

Q. Now, outside of a head roustabout, I mean, I am talking about men now, workers, did you ever have any such instructions on that?

A. No, sir, I don't recall any now, no.

Q. Now, on this transfer you made to Lance Creek, you knew Mr. Rice didn't want inefficient men, didn't you?

A. Yes, sir.

Q. He wanted fellows that knew how to do the work, didn't he?

A. Yes, sir.

Q. And you knew that Mr. Bowen up in Salt Creek when you transferred Canning and Jackson was interested in getting those that weren't going to be cripples, but men who would work, is that right?

A. Yes, sir.

Q. Well, did you ever transfer any other men except these men to Lance Creek from Big Muddy after you be-

came foreman? Ever transfer any, for example, to Texas or Oklahoma before, or New Mexico?

A. No, I think all the transferring I have done outside of Wyoming is one man to Kansas and one man to south Texas.

Q. And they were both from Salt Creek, were they?

A. Yes, sir.

Q. Well, at the time you transferred these men from Big Muddy to Lance Creek, Mr. Bartels, did the name of Jones and Moore come up at that time for transfer?

A. The men I transferred to Lance Creek, that I was talking about, was after the time Mr. Jones and Mr. Moore were transferred.

Q. And did you have any transfers before Mr. Jones and Mr. Moore were transferred?

A. No, sir, I don't think I did.

Q. Well, you worked in the office as clerk. Were there any transfers while you were clerk?

[fol. 1233] A. I suppose there was. I don't recall any particular instance at this time, but I think there was. For instance, Mr. Jones himself was transferred to Walden at one time from Big Muddy, and I think at that time there were probably six or eight other men transferred to Walden.

Q. He was brought back to Big Muddy after that, wasn't he?

A. Yes, several years later, I believe. I think there were men transferred to Oregon Basin, also from Big Muddy, possibly during the time I was clerk.

Mr. Shaw: I think that is all, Mr. Bartels.

#### Redirect examination.

By Mr. Akolt:

Q. Mr. Moore at one time had been a cleanout driller in the Big Muddy?

A. Yes, sir.

Q. And wasn't he demoted from that position to what is known as a crumb boss?

A. Yes, sir.

Q. He had held better jobs in Big Muddy than what he had held in the last few years, hadn't he?

A. He had held a number of different jobs.

Q. You mentioned about the insulation of these central



power plants, and the fact that the force was reduced by one man prior to this 1936 reduction. Isn't it true that while this standardization program was being carried out, there was extra work in the field, caused by that program, the retention of whom would not be required after that was completed?

A. Yes, the building of those powers caused considerable work while the building was going on.

Q. And does that explain why the force was not reduced—

A. Yes, sir.

Q. (continuing) more prior to this 1936 reduction?

A. Yes, sir.

Q. I neglected to ask you yesterday, Mr. Bartels, if you had anything to do with delivering, or attempting to deliver to Mr. Moore the letters which Mr. Shannon had dictated, addressed to Mr. Moore, and which appear in evidence as "Board's Exhibit 14-AA", being Mr. Shannon's letter of May 5, 1936, addressed to Mr. Moore, and "Respondent's Exhibit 14-DD", being Mr. Shannon's letter of [fol. 1234] May 20, 1936, addressed to Mr. Moore. Did you have anything to do with the delivering or attempting to deliver those letters to Mr. Moore?

A. This letter, "14-AA", was handed me by Mr. Thomas, and I think he had to leave for Lance Creek, and I can't remember whether I called Mr. Moore to the office and showed him the letter, or if I told him the letter was there for him to read, and for him to come over and read it.

Q. Well, what did he do when you told him that?

A. Well, I couldn't say whether he went over to read it, or whether he didn't.

Q. That is the first letter?

A. That is the first letter.

Q. Now, the second letter.

A. Now, the second letter I made a special trip to Glenrock to find Mr. Moore to deliver it to him.

Q. Why did you have to go to Glenrock?

A. Because he was, I was told he was down in Glenrock at his son-in-law's house the morning that I wanted to give him this letter.

Q. He wasn't working at this time?

A. No.

Q. That was May 20th or after?

A. I imagine it was about May 22nd. This letter is dated



the 20th, so it might have been the 21st, and Mr. Moore hadn't been working since the first of the month.

Q. State what happened when you found Mr. Moore.

A. I found him out to his son-in-law's house, and called him out, and handed him the letter, and he glanced at it, I couldn't say whether he read it through to the end or not, but he threw it back in the car, and he said he wasn't interested in it.

Q. What do you mean, threw it back in the car? Were you in a car?

A. I was sitting in the car, and he came out to the car. He acted like he was afraid he was going to hang on to it too long.

Q. He came out of the house?

A. Yes, sir.

Q. He was in the car with you?

[fol. 1235] A. No, he was outside of the car, he stood on the side of the car talking to me.

Q. Mr. Shaw asked you certain questions about the transfer of the most inefficient men. If I understand you from what you testified to yesterday, on inefficiency, you mean by that, do you, inefficient in connection with your whole organization in your particular field?

A. Yes, sir.

Q. And on a comparative basis with the rest of the men in the field, is that correct?

A. Yes, sir.

Q. And when a man is picked out for transfer to a particular field, do I understand that consideration is given to the fact that it is thought that he can fit into the new field where he is being transferred to?

A. Yes, sir.

Q. And these persons that you pick out, they are to be approved and discussed with Mr. Thomas the district superintendent, are they not?

A. Yes, sir.

Q. And then approved by Mr. Shannon as division superintendent?

A. Yes, sir.

Q. And then the regular E & C Form or record is prepared?

A. Yes, sir.

Q. It is all handled through that regular procedure?

A. Yes, sir.

Q. Mr. Bartels, referring again to Big Muddy, at any time in the month of June, 1937, did any employees in the Big Muddy field inform you that an association of employees had been organized?

A. You say did they inform me that there had been?

Q. Yes.

A. Yes, sir.

Q. At what time?

A. I think it was possibly around the middle of June.

Q. Who were the employees who so informed you?

A. Mr. O'Neal, and Mr. Peterson.

Q. And is that Mr. I. H. O'Neal, and Mr. R. P. Peterson?  
[fol: 1236] A. Mr. I. H. O'Neal and Mr. R. P. Peterson,  
yes, sir.

Q. What did they inform you?

A. Well, they informed me of a petition, showed me the petition with the signatures on it at that time.

Q. Do you recall how many names were on the petition?

A. I think there was 16.

Q. Do you know how many employees were working in the field at that time?

A. I think there was 21.

Trial Examiner Holden: Could we please eliminate "think" from the testimony, and ask the witness as to his knowledge? If he doesn't have knowledge, so state.

Q. Mr. Bartels, do you get what the Examiner is saying? You are putting into your answers, "I think there was 16".

A. Well, there was 16 signatures on the petition, I am sure of that, but as far as the total number of employees in the field at that time, I couldn't tell you.

Mr. Akolt: Well, that appears on the pay roll list that has been offered in evidence, I believe.

Mr. Shaw: Is there one for that month, June, 1937?

Mr. Akolt: I think so. I will just verify that.

Yes, "Respondent's Exhibit 3-C", that is for the month of June, 1937.

Mr. Shaw: Thank you.

Q. Was a copy of this petition you refer to left with you?

A. The original was left with me for several days.

Q. Then, what did you do with it?

A. I gave it to Mr. J. C. Thomas, and I think he returned



it, I am sure that he did return it to Mr. O'Neal or Mr. Peterson.

Q. Did you ever inform Mr. Shannon that the petitioner had been exhibited to you?

A. No, sir, I did not.

Q. Just informed Mr. Thomas?

A. Yes, sir.

Q. When were you transferred from Big Muddy to Salt Creek?

[fol. 1237] A. July 1, 1938.

Q. As foreman?

A. Yes, sir.

Trial Examiner Holden: That date, will you state it, please?

Witness: July 1, 1937.

Q. Are you in Salt Creek the foreman of the operations in the field and also in the gas plant?

A. Since the first of the year, when Mr. Kennelly left, I was told that I was the ranking foreman in Salt Creek, for the field and the gasoline plant.

Q. That means that since the first of the year you have been in charge of the plant and the field?

A. Yes, sir.

Q. What happened at the first of the year?

A. Mr. Kennelly was transferred to Lance Creek. He had been in charge of the plant, living at Salt Creek, prior to that time.

Q. Did you hear Mr. Shannon's testimony in this case?

A. Yes, sir.

Q. Did you hear his testimony with reference to the work performed by roustabouts and head roustabouts, and the clerks in the office at Salt Creek?

A. Yes, sir.

Q. Without asking you in detail what they do, will you state whether or not Mr. Shannon's testimony as to the work done by these different classes of men is correct, since you have been foreman of the Salt Creek field?

A. I would say that it is substantially correct, yes, sir.

Q. Is there any change at all that you would make in Mr. Shannon's statement?

A. No, I think he was asked what a typical gang was, and I believe he had the number of men pretty high. I would say



a typical gang was one head roustabout and 2 men. I think he said 4 or 5.

Mr. Akolt: I think that is all.

Recross-examination.

By Mr. Shaw:

Q. I show you "Respondent's Exhibit 14-C", and ask you [fol. 1238] whether you have ever seen this "Exhibit 14-C", and "14-B", before, being a letter from Mr. Dyer to Mr. Shannon under date of April 10, 1936?

A. No, sir, I have not seen it.

Q. You didn't see that?

A. No, sir.

Q. Were you told about it?

A. About what is in the letter?

Q. Yes.

A. No, sir.

Q. This letter from Mr. Dyer reads: "If these employees (referring to Ernest Jones and Frank D. Moore) are not satisfactorily performing their duties, they should be laid off, regardless of any change in schedule." Did you have those instructions?

A. No, sir, I did not.

Q. Were these men satisfactorily performing their duties?

A. I wouldn't say that they were, no.

Q. Well, from what you say they couldn't possibly have been satisfactorily performing their duties, could they?

A. That is right.

Q. They were the most inefficient employees in the field, is that right?

A. Yes, sir.

Q. One of them soldiered on the job, that is Moore, isn't that right?

A. Yes, sir.

Q. One of them never got to work on time, is that right? That was Jones?

A. I didn't say that he never got to work on time.

Q. Well, there were a number of times that he didn't get to work, and put in his full day's work?

A. Yes, sir.

Q. One of them had a fire on his property, which you think was his fault, is that right?

A. Yes, sir.

Q. One of them didn't keep his lease clean, and his pumps in order, is that right?

A. Yes, sir.

[fol. 1239] Q. And, generally speaking, both of them were very highly unsatisfactory employees in your judgment, isn't that true?

A. They were quite unsatisfactory, yes, sir.

Q. And yet, in spite of that they were transferred?

A. Yes, sir.

Q. In direct opposition to the instruction of Mr. Dyer to Mr. Shannon: "if they are not satisfactory employees, they should be laid off".

A. I didn't know anything about the instructions from Mr. Dyer to Mr. Shannon at that time.

Q. You didn't know anything about that?

A. No, sir.

Q. You never heard of that?

A. No, sir.

Q. When you received the letter to turn over to Mr. Moore, the letter from Mr. Shannon to Mr. Thomas being "Respondent's Exhibit 14-X", and "Y", on "Exhibit 14-Y", appears the following:

Trial Examiner Holden: Which date is that please?

Mr. Shaw: This is the date of May 4, 1936.

Q. "If he (that is Moore) elects to go back to work in his previous status, I will ask that you give him the enclosed letter, setting out our position in the matter." This is on May 4, Mr. Bartels. What did that word, or those words, "his previous status", mean to you?

A. I didn't see that letter at the time.

Q. You never saw the letter?

A. You mean Shannon's letter to Mr. Thomas?

Q. Right?

A. No, sir.

Q. Well, what did Mr. Thomas instruct you about the letter?

A. He handed me the letter and told me to go out and give it to Moore.

Q. Well, didn't he tell you you weren't to give it to him unless Moore agreed to come back to work?

A. No, sir.

Q. At any rate, you didn't give Moore the letter, did you?  
[fol. 1240] A. I didn't give it to him direct. I testified  
as to how the letter was handed to Mr. Moore.

Q. Well, why didn't you give it to him?

A. I don't remember the incident. I supposed that Mr.  
Moore, when I told him there was a letter in the office, would  
come over and read it.

Q. Is there any particular policy or form of handling mail  
in your company, mail for employees from Mr. Shannon,  
say?

A. I don't know as there is.

Q. Is there any objection to handing a fellow a letter  
addressed to him?

A. Not in the least, no.

Q. Now, you made out an E & C Form for Jones, did you  
not?

A. I don't think I did, no.

Q. Who makes that out?

A. I imagine my clerk did.

Q. Well, you approved it, didn't you?

A. Yes, sir.

Q. And you sent that in to Mr. Shannon, and Mr. Shannon  
sent it back and told you that the reason for transfer wasn't  
properly stated, is that right?

A. That came out in the testimony yesterday. I don't re-  
member the incident.

Q. You don't remember what the E & C Form said, the  
first one; as to reason for transfer, do you?

A. No, sir, I don't.

Q. Is that old E & C Form still in existence now, or has  
it been destroyed?

A. I couldn't say. It may be in the Big Muddy office files.  
Whether it was or wasn't, I am sure of this, that I didn't  
destroy it myself, or don't remember of having destroyed it.

Q. If it is in existence could you produce it?

A. Yes, sir.

Mr. Shaw: I shall request the witness to do so if he can.

Mr. Akolt: Well, we will have to get the foreman down  
in Bug Muddy to do it now, but we will produce it if it is  
there.

[fol. 1241] Mr. Shaw: Oh, I am sorry. I am forgetting  
the witness was transferred to Salt Creek.



Q. Now, did you have anything to do with the preparation of the pay roll?

A. Do I have anything to do with it?

Q. Yes.

A. The clerk makes up the pay roll. I approve it.

Q. You approve it, is that right?

A. Yes, sir.

Q. I show you "Board's Exhibit 137". Turning your attention particularly to "Board's Exhibit 137-G", is the name appearing at the top of that pay roll your name and your signature?

A. Yes, that is my signature.

Q. At the time you signed this document was the notation opposite Mr. Moore's name with or without the correction, that is, from "terminated", to "transferred"?

A. I couldn't say. That is not my handwriting though, there. I know that.

Q. You don't know what it was when you approved it?

A. No, sir, I don't know.

Trial Examiner Holden: Which is not the handwriting?

Mr. Shaw: The handwriting he referred to is the handwriting of the word, "transferred", opposite Mr. Jones' name.

Q. Now, how does it come that the other men who have been transferred appeared on the pay roll as "transferred", to a particular place, and the date that it goes into effect, and no such statement appeared opposite Mr. Moore's name.

A. Well, here is Mr. Canning, he really was transferred on May 1st, but just exactly whether the pay roll so states—

Q. And that is also true of Mr. Jackson, he really was transferred on the 22nd of April, wasn't he?

A. Right.

Q. And he was transferred to Salt Creek?

A. Yes, sir.

Q. And then Mr. Jones, he really was ordered to be transferred to Hobbs, New Mexico, effective May 1st, wasn't he?

A. Yes, sir.

[fol. 1242] Q. Now, as a matter of fact, Moore was ordered transferred to Hobbs, New Mexico, wasn't he?

A. Yes, sir.

Q. Well, how does it happen that his name does not appear here?

A. Well, sir, I will tell you how that happened. I think that pay roll is prepared possibly on the 29th of April, the day before the last of the month.

Q. How did you know on the 27th of April that Moore was going to Hobbs, New Mexico?

A. I said the 29th of April. I didn't know that Moore or Jones either one were going to Hobbs.

Q. Well, that is when you notified them, on the 27, didn't you?

A. I think I notified Mr. Jones on the 27th, and Mr. Moore on the 28th.

Q. What time of day on the 28th?

A. About 4 o'clock in the afternoon.

Q. You are sure you didn't notify them the same day?

A. No, sir, I didn't.

Q. You couldn't be wrong in that?

A. I don't believe so. I am sure there was a day's difference in the date the two men were notified.

Q. But you don't recall?

A. That is as I remember it.

Q. I understand then, this pay roll is made up when?

A. Possibly the 29th.

Q. Well, was that the day before or the day after you notified Moore of his transfer?

A. It was evidently the day after I notified Moore of his transfer.

Q. Well, on the 29th you knew that Moore was going to Hobbs, didn't you?

A. No. I think Moore told me flatfooted at that time he absolutely would not go to Hobbs.

Q. So you instructed the clerk at that time, did you, to put Moore down as fired?

A. I don't think I gave him any instructions on it. It looks as though he decided Moore was terminated and later changed his mind and decided to make it transferred. That [fol. 1243] is the clerk's handwriting, and why he decided to do it that way, I don't know.

Q. The clerk works under your instructions, does he not?

A. Yes, but I don't follow him on every little detail.

Q. Now, you say that in June, 1937, an independent association was formed in the Big Muddy field to your knowledge?

A. Yes, sir.

Q. And a group of men came to you and told you that it was formed, is that right?

A. Yes, sir.

Q. And these men were Mr. Peterson and Mr. O'Neal?

A. Yes, sir.

Q. What did they tell you they organized their association for? What was the purpose of it?

A. I don't remember the exact conversation at that time, they just told me they had formed an association, and showed me the petition. There was very little said about it at that time.

Q. Well, what did the petition say, do you recall what was on it?

A. No, I can't give you the wording of it.

Q. Now, these two men that called on you were Mr. R. P. Peterson, and H. O'Neal?

A. Yes, sir.

Q. Now, this telegram, "Respondent's Exhibit 12", shows another man, H. L. Jones. Did he call on you?

A. He didn't at the time Mr. Peterson and Mr. O'Neal did.

Q. Well, did he later?

A. No.

Q. Now, do you recall the exact date in June that it was?

A. No, sir, I don't.

Q. Well, was it about the time the telegram was sent, was it about the 28th of June?

A. No, it was before that, I believe.

Q. How did you know when the telegram was sent out, Mr. Bartels?

A. I have heard about it at this trial.

Q. Never heard about it before?

A. I heard rumors of it, but I didn't know the exact conditions, no.

[fol. 1244] Q. Now, this was before the telegram was sent, that you received the petition?

A. Yes, sir.

Q. How long before?

A. I would say several weeks.

Q. Well, it was still in the month of June, wasn't it?

A. I believe so, yes.

Q. Now, at that time, where did Mr. Jones live, Mr. H. L. Jones?

A. I believe he lived in Glenrock.



Q. You know where he lived in Glenrock, don't you?

A. Yes, sir.

Q. The day before this petition was handed to you, or two days before, you spent the whole day down there with Mr. Jones, didn't you?

A. No, sir, I didn't.

Q. You spent a few hours there, didn't you?

A. No, sir, I didn't.

Q. You spent some time down there, didn't you?

A. I don't remember of it.

Q. You drove your car down there, and went in and had quite a long talk with Mr. Jones, didn't you?

A. I may have been down there for 15 or 20 minutes some time, I don't know.

Q. Now, what did you talk about during the 15 or 20 minutes the day before this petition came to your attention?

A. I don't remember what the conversation was about now.

Q. Well, you talked about a petition, didn't you, about getting the boys together in an organization?

A. No, sir, I didn't.

Q. You didn't?

A. No, sir.

Q. Do you know what you did talk about?

A. No, sir, I do not, no. Something about the work in the field, I imagine.

Q. Well, that was part of the work in the field, wasn't it?

A. Oh, I wouldn't call it that, no.

[fol. 1245] Q. But you were at Jones' house a day or two before you received this petition, is that right?

A. I wouldn't say for sure that I was.

Q. Well, were you or were you not?

A. I don't know.

Q. Well, you went to Peterson's house, didn't you, and talked to him?

A. No, sir, I didn't.

Q. You went to O'Neal's house and talked to him?

A. No, sir.

Q. You didn't?

A. No, sir.

Q. Well, did you talk to these men anywhere, at their houses, or anywhere else about forming an association?

A. I think I did talk to Mr. O'Neal about it.

Q. What did you talk about it?

A. Mr. O'Neal brought the conversation up.

Q. What did he say about it?

A. He told me he was going to try to start something like that, and wanted to know how he could go about it, and one thing and other, and I told him it was up to him.

Q. Didn't you give him any instructions how to go about it?

A. I don't think so.

Q. Well, didn't you tell him about the petition?

A. I don't recall just what we did talk about on the conversation. I knew that he had spoken to me something about a petition, and I think he had, Mr. Peterson, possibly had heard something from the Salt Creek petition.

Q. Was Peterson up at Salt Creek?

A. No, but if I remember right, Mr. O'Neal told me that Mr. Peterson was talking to Mr. Hainworth. I think Mr. Hainworth had been down to see Peterson.

Q. Mr. Hainworth had been to see Peterson?

A. Yes, sir.

Q. Well, did Peterson tell you what Hainworth told him?

A. No; he didn't.

Q. You have been in this trial, haven't you?

A. Yes, sir.

[fol. 1246] Q. That is the same Hainworth who testified that he had a talk with Mr. Shannon before he prepared his petition?

A. Yes, sir.

Q. Did you receive any instructions from your superiors about the effect of the Wagner Act on your activities in the field?

A. No, sir, I didn't.

Q. Never talked to anybody about it?

A. No, sir.

Q. You keep in pretty close touch with Mr. Tillman down at the refinery, don't you, at Glenrock?

A. I see Mr. Tillman quite frequently.

Q. Didn't you ever discuss the matter with him?

A. No, sir, I didn't.

Q. Didn't you ever discuss with Mr. Tillman the fact that Mr. Miller had written Tillman a letter on that matter?

A. No, sir, I didn't.



Q. Well, now, after they handed you this petition for an independent union, or whatever it was, did you ever have anything to do with bargaining with these men?

A. No, sir. I left.

Q. Did they ever ask you for a conference?

A. No, sir, they didn't.

Q. Did they ever have any matters to take up with you?

A. No, sir.

Q. This I. H. O'Neal is the same fellow who took Jones' job as a pumper, isn't he?

A. I wouldn't say that he was, no.

Q. I thought you testified yesterday that he was.

A. I said there were 3 pumpers transferred at the Big Muddy on May 1st, 1936, and that one roustabout was shoved into a pumping position as the result of those 3 men being transferred.

Q. And that was this fellow O'Neal, wasn't it?

A. Yes, sir.

Q. And that is the fellow who started the circulation of this petition?

A. He was interested in it, yes.

Mr. Shaw: I think that is all, Mr. Bartels. Thank you.  
[fol. 1247] Mr. Akolt: I think that is all.

#### Examination.

By Trial Examiner Holden:

Q. Mr. Bartels, do I understand from your testimony that Mr. O'Neal as a roustabout was a better pumper than any of the pumpers that were transferred from this field?

A. Well, I would say this, answer it this way: Mr. O'Neal had had a lot of experience in oil fields, and made me a very good pumper.

Q. Well, at the time, did you know whether or not he was any good as a pumper?

A. Yes.

Q. What was your basis for that knowledge?

A. Well, in the time that he had roustabouted there, probably in the six months prior to the time he was put into this pumping job, he had relieved men who were sick or on a vacation or something like that, as a pumper.

Q. Will you please fix as nearly as possible the time when



you notified Mr. Moore of his transfer to Hobbs, New Mexico?

A. I think it was 4 o'clock, around 4 o'clock in the afternoon of April 28.

Q. Well, how do you fix that?

A. Well, I know that, I am sure that I notified Mr. Jones a day before I did Mr. Moore, and hearing the testimony here has sort of refreshed my memory on it. I do remember that Mr. Jones after I notified him left the field for three days, I didn't see a thing of him, and that he arrived back in the field on the first of May. That is my best recollection of the deal.

Q. Well, were you instructed to notify these 2 men as to their transfers?

A. Yes, sir.

Q. How were you instructed?

A. By telephone from Mr. Shannon.

Q. What did Mr. Shannon instruct you to do?

A. I immediately went to see them after I had received the telephone call.

Q. Well, can you fix the time of this telephone call?

A. Well, in Mr. Moore's case I would say it was possibly [fol. 1248] 10 minutes before I talked to Mr. Moore, which I think was around 4 o'clock in the afternoon.

Q. Was it in another telephone call that you were instructed to notify Mr. Moore?

A. Yes, sir.

Q. Who was your clerk at Big Muddy that assisted on the pay roll, please?

A. Garland M. Johnson.

Q. Did you ever discuss with Mr. Rice of Lance Creek in any way the possibility of transferring the men to Lance Creek in May of 1936?

A. No.

Q. With reference to this petition which was brought to you by Mr. O'Neal and Mr. Peterson in June of 1937, do you recall what they said to you at that time?

A. Well, I never talked to Mr. Peterson about it.

Q. Who brought it?

A. Mr. O'Neal is the only man I talked to about it.

Q. Do you recall what he said to you, or what you said to him in that connection?

A. Well, he had heard about independent union at Salt Creek.

Q. Well, I refer to the time when the petition was presented to you.

A. Oh no, I don't think there was any conversation. He handed it to me, and what he said when he handed it to me, I absolutely don't remember.

Q. Do you have any recollection of what was stated at the handing of the petition?

A. No, I don't have now.

Q. Do you have any recollection as to how many signatures were on it?

A. I am sure there were 16.

Q. Do you know whether or not they were the signatures of employees at Big Muddy?

A. Yes, sir, I was sure of that.

Q. What is your basis for that statement?

A. I looked the petition over, the signatures on it, I mean.

Q. Now, with reference to the beginning of 1938, I understand [fol. 1249] stand you were advised that you were ranking foreman at Salt Creek?

A. Yes, sir.

Q. And who advised you, please?

A. Mr. Thomas, Mr. J. C. Thomas.

Q. Was anything else said?

A. Well, I was told that on account of Mr. Kennelly leaving the field, if anything of importance came up over at the gas plant that I would be consulted by Mr. Hammond, who was the clerk and tester at that place.

Q. With reference again to the selection of the men to be transferred in 1936, when did you first know that Jones, Moore, Whitlock and Jackson were the men selected?

A. Around the first of April.

Q. Where were you?

A. At Big Muddy.

Q. With whom?

A. Mr. Shannon and Mr. Thomas.

Q. This was at that conference to which you testified?

A. Yes, sir.

Q. Now, tell me, please, whether or not you three men in conference decided that these were the men to be transferred?

A. Well, as I remember it, we talked about this matter, and decided there was 4 men to be transferred. We would have to cut down four men.

Q. Who is "We"?

A. Mr. Shannon, Mr. Thomas, and I. And I don't remember whether Mr. Shannon went somewhere else in the field, or went to Casper, but it runs in my mind that he returned later that day, and we then informed him of these 4 men that we had decided on, Mr. Thomas and I had.

Q. You and Mr. Thomas discussed the possibilities, is that right?

A. Yes, sir.

Q. And I ask you if you discussed these four men?

A. Yes, sir.

Q. Did you discuss any other men, that you recall?

A. Well, I think there were 5 discussed at the time.

Q. And who was the 5th, do you remember?

[fol. 1250] A. Canning.

Q. And anybody else?

A. I don't remember of it, I don't think there was.

Q. Do you recall how you happened to pick on these 5 men? Did you have the pay roll there to check over?

A. Yes, sir.

Q. Did you give any consideration at all to any other men?

A. I don't believe we did at that time.

Q. Now, Mr. Whitlock was one of the 4 you picked?

A. Yes, sir.

Q. Was he, in your opinion, the best or the worst of the 4, or how did he rate?

A. Well, I would say that he was as good as the best of the 4, possibly the best of the 4.

Q. What did you have against Mr. Whitlock?

A. Well, I'll tell you. Mr. Whitlock and Mr. Jackson were both working as night pumpers, and the field hadn't been running quite as it should, in my opinion, during the night. They were working 6 hours each night each, and I just thought I would let these two men go to Salt Creek, and put on a couple of new men at night, a couple of different men that I had in the field.

Q. Now, I understand Mr. Whitlock was not accepted.

A. Yes, sir.

Q. At Lance Creek?

A. That is correct.

Mr. Shaw: Salt Creek.

Trial Examiner Holden: Salt Creek.



Q. And then what happened to Mr. Whitlock?

A. He is still in Big Muddy.

Q. Well, then you picked Mr. Canning?

A. Yes, sir.

Q. He was better or worse than Mr. Whitlock?

A. Well, I would say that he was a better man, he was younger.

Q. But you kept a worse man so that Salt Creek might have whom they wanted, is that right?

A. That is true.

[fol. 1251] Q. But I understand no consideration was given to the retention on the former basis of employment of Moore or Jones, when they refused to be transferred?

A. I don't get that question.

Trial Examiner Holden: Strike it please, Miss Reporter.

Q. I don't quite understand why Mr. Whitlock was chosen. He was refused in the suggested transfer, and he was continued in employment?

A. Yes, sir.

Q. Mr. Moore and Mr. Jones were chosen, they refused as to their suggested transfers, and they lost their jobs?

A. Well, Mr. Moore was offered his job back right there in Big Muddy.

Q. On what basis?

A. On the same basis that he was on.

Q. No qualifications?

A. I heard him say that he was told that he could only have his job back for the duration of his wife's illness. Now, I don't remember making that exact statement to him.

Q. A statement to that effect, did you make?

A. There was something said about his wife's illness, wondering whether when she got well, if we would try to transfer him again. I said, "Well, why worry about that, Dinty?" The nature of his wife's illness, she would be laid up for 5 years or so. "And you might have a different foreman here at that time that could get along with you."

Q. What does a tool dresser do?

A. He helps the driller, he is the driller's helper, in other words.

Q. And I understand that Mr. Moore had been that to some extent?

A. Yes, sir.

Q. I understand it is a higher paying job than a roustabout?

A. Yes, sir.

Q. I further understand that was the job which he was to do in New Mexico?

A. Yes, sir.

Q. Is Mr. Moore in your opinion a competent tool dresser? [fol. 1252] A. He always got by as a tool dresser, I think, alright, yes, sir.

Q. How long is it since he has done that work to your knowledge?

A. Well, at the time this transfer was offered, he probably hadn't done any tool dressing for three years.

Q. I got the idea from his testimony, rightly or wrongly, that he at least did not feel that he was able to do work as strenuous as tool dressing at this time.

A. Well, I heard his testimony on that, and I couldn't quite understand it. He talked about dressing 20 inch bits, and the biggest bit I ever saw myself on a cleanout string was 6 inch. And as far as being a cleanout helper, I certainly don't consider that hard work.

Q. Well, what does he do, what does such cleanout helper do?

A. Well, they watch the boilers for one thing, and they help the drillers get the tools, or the bailer, and at times run the engine for the driller, run the steam engine, and of course they have got to keep the thing in repair, and keep it looking good.

Q. He spoke of wielding a sledge or hammer.

A. Well, he was talking about that in connection with dressing bits, and here is the situation on a cleanout well. As I said before, there is nothing used bigger than 6 inch bits in cleaning out wells. 20 inch bits are used in drilling wells, and in my estimation there is very few bits dressed by the driller and his helper at the well. That work is mostly done these days at the shop.

Q. That is where the heavy hammer is used, is that right?

A. In case a bit has to be dressed, yes.

Q. Now, he spoke about climbing around the rig.

A. In being a cleanout helper he may have to climb the derrick occasionally.

Q. Do you know whether or not he knew what his duties were to be in New Mexico?

A. Oh, I am very certain that I told him.

Q. What did you tell him?

A. That he was to go to Hobbs, New Mexico, as a cleanout helper.

Q. Did you tell him what his pay would be?

[fol. 1253] A. I don't think I told him exactly. I told him it would run somewhere's between \$140 and \$150 a month. I don't believe at the time Mr. Shannon called me that he had the exact rate, but he knew about what it was.

Q. Could you give me any specific instance where complaint was made to you by a head roustabout concerning the unsatisfactory nature of Mr. Moore's work?

A. No, sir, I cannot.

Q. Now, I understand that in the spring of 1937, the work week was reduced from 48 hours to 40 hours?

A. Yes, sir.

Q. At that time you were at Big Muddy?

A. Yes, sir.

Q. Were any men taken on?

A. Yes, sir.

Q. Who, do you know?

A. You want their names?

Q. Please.

A. B. C. Nelms, and Ernest Keen, and Claude H. Klintworth.

Q. What were their classifications, please, as to being pumpers, or roustabouts?

A. They were all hired as roustabouts.

Q. Where did they come from?

A. They were men that lived in the community, and had worked there before in temporary roles for us.

Q. How long since they had worked for you, do you know?

A. Oh, I think Mr. Keen and Mr. Klintworth had worked for us possibly a while each summer for the previous two summers.

Q. That is the summer of '36 and the summer of '35?

A. The summer of '36 and the summer of '35, I believe. And Mr. Nelms had worked for us temporarily all the summer of '36 and I believe the first two months of '37.

Q. While you continued at Big Muddy was any one of these men changed to the classification of pumper?

A. These particular three?

Q. Yes.

A. No, sir.

[fol. 1254] Q. Well, presumably the work to which they



were assigned was work which Mr. Moore was competent to do?

A. Yes.

Q. Or Mr. Jones was competent to do?

A. Yes.

Q. No offer was made to either of them?

A. To Mr. Jones or Mr. Moore?

Q. That is right.

A. Not that I know of.

Q. Was such offer considered, do you know?

A. Not to my knowledge. They had made no application for the job.

Q. Who determined what men would be taken on in early 1937?

A. I decided it myself, I think that I picked these 3 men and I might have got Mr. Thomas' approval on it, I don't remember.

Q. Had they made application?

A. Oh, they had had their application in verbally for several years, that any time there was an opening they wanted to get on, yes.

Q. You don't know whether or not Mr. Moore or Mr. Jones wanted to work?

A. No, I don't.

Trial Examiner Holden: No further questions.

Recross-examination.

By Mr. Shaw:

Q. Did you ever do any drilling Mr. Bartels?

A. No, sir.

Q. Did you ever handle tools in any way?

A. No, sir.

Q. Do you know how tools are handled at Hobbs, New Mexico?

A. No, I don't know exactly.

Mr. Shaw: That is all.

Redirect examination.

By Mr. Akolt:

Q. Did a roustabout in the Big Muddy field have to climb the derrick?

[fol. 1255] A. Yes, sir.

Q. If Mr. Moore was on the job as roustabout in Big Muddy he would have to climb derricks the same as he would have to if he went to Hobbs, wouldn't he?

A. At times, yes, sir.

Q. When you put on these three men, that the Examiner has been asking you about in the spring of 1937, you only did that, did you not, after Mr. Thomas, the superintendent, had told you that the increase in force had been authorized?

A. Yes, sir.

Q. By the company?

A. Yes, sir.

Mr. Akolt: Just one other question, and I think I am through.

Q. There has been some reference to notation on the "remarks" column of the April 30, 1936 Big Muddy pay roll, "Board's Exhibit 137-E". State whether or not it is true that remarks from time to time on these pay rolls are placed there by the pay roll department in Ponca City.

A. I imagine there is at times.

Q. So that, it is not necessarily, in that remark column what ever is there doesn't necessarily come through your office?

A. No, not necessarily.

Q. It may come any place up the line.

A. Yes, sir.

Mr. Akolt: I think that is all.

Recross-examination.

By Mr. Shaw:

Q. Was there any drilling done in the Big Muddy field since the time you were foreman?

A. Yes.

Q. How many wells were drilled?

A. One well, one well was deepened, it wasn't drilled.

Q. And all you know about drilling you got from observing that job?

A. No, I have been around drilling wells for 15 years.

Q. But you never did any drilling yourself?

A. No, sir.

[fol. 1256] Q. Never worked on a drilling crew?

A. No, sir.

Mr. Shaw: That is all.

Mr. Akolt: That is all.

Trial Examiner Holden: Off the record.

(Discussion off the record.)

Trial Examiner Holden: On the record.

### Examination.

By Trial Examiner Holden:

Q. Mr. Bartels, you have just been asked concerning remarks in the "remark" Column. Referring to the exhibit, "Board's Exhibit 137-D," do you know whether or not the handwriting there "transferred" is the handwriting of your clerk?

A. It looks like it to me.

Trial Examiner Holden: No further questions.

Mr. Shaw: I have one little question here that I should like to ask.

### Cross-examination.

By Mr. Shaw:

Q. Mr. Bartels, turning again to "Board's Exhibit 137-D", after the name of Moore, in the same column with Moore's name, appears an ("X".) Do you know what that means on a pay roll?

A. I think if you had the second sheet of the summary we could tell.

Q. All right, I show you "Board's Exhibit 137-H".

A. That is terminated employees.

Q. What does that mean?

A. This means terminated employee.

Q. Well, how do you mean it means "terminated employee?"

A. I think that is the rule.

Q. Well, what is an "X" employee?

A. Well, there is some ruling about that "X" business, I have seen it on lots of payrolls, but I can't tell you exactly what it is.



Q. Well, what is the mysterious "X", do you know?  
[fol. 1257] A. No, sir.

Mr. Akolt: Well, he just got through telling you he didn't know. Why do you want to ask him again?

Witness: I think you will probably see that same "X" on a good many payrolls.

Q. Do you know who would know?

A. I could find out for you. I don't know of any body here that knows.

Mr. Shaw: I have no further questions.

Mr. Akolt: That is all.

Trial Examiner Holden: The witness is excused.

(Witness excused.)

Trial Examiner Holden: Shall we take our recess now?

Mr. Akolt: I would like to recall Mr. Shannon for one minute before we forget it, and talk about "X".

Trial Examiner Holden: All right.

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R. S. SHANNON, recalled on behalf of the respondent, Continental Oil Company, having been previously sworn, was examined further and testified as follows:

Direct examination.

By Mr. Akolt:

Q. Mr. Shannon, I hand you "Board's Exhibit 137-C" and "137-H" and call your attention to the letter "X" in parentheses after Mr. Moore's name. Is that the only place that it is? And the letter "X" in parentheses at the end of the second sheet of "Board's Exhibit 137-H" and ask you if you can explain what the "X" means?

A. Well, these payroll sheets pass through from the field office to the division office, and from there on to the payroll office at Ponca City, and there are different symbols and letters and figures put on from time to time, and the routine and regulations regarding such symbols and marks are changed from time to time. To the best of my belief, that mark in this summary was put on the payrolls in the payroll department in Ponca City, and it means that the

man was terminated as far as the records show, on that payroll in Big Muddy.

Q. Your "X" means terminated?

A. Yes.

Q. And that is what it says at the bottom of the exhibit, isn't it?

A. Yes, it says "X" employee.

Q. On the summary at the bottom it says "Permanent employees, 33, Temporary, none, "X" employees, 1, Total 34" and that makes up the 34 names that are listed on the entire payroll, doesn't it?

A. Yes, it is a summary made up for their records.

#### Cross-examination.

By Mr. Shaw:

Q. Now, Mr. Shannon, I don't know what "X" means, either, but if Jones, if Moore has an "X" after his name, why shouldn't Jones have one?

A. Well, I would assume that that was because when this payroll sheet finally went into the payroll files at Ponca City that they hadn't received the final E & C form on Jones, or something of that kind.

Q. Well, now, as a matter of fact, the E & C form on Jones went in an awful lot earlier than it did on Moore, didn't it?

A. Well, I think the records of the testimony here indicated that his form was returned for correction, and there may have been a delay then, through the routine, in its reaching the payroll department.

Q. But, Mr. Shannon, Mr. Moore wasn't actually discharged until May 20th; I mean, you gave him the opportunity to go back to work, didn't you?

A. Well, that wouldn't have reference to that. He was terminated as far as the records in Ponca City were concerned, as far as the Big Muddy. They evidently had the E & C form on that, at that time.

Q. Well, do you know when the E & C form on Mr. Moore went in?

A. Well, not without checking to find out, no.

Q. Well, the E & C form appears as "Respondent's Exhibit 14-B", but there is no statement here as to when it was filed or when it went in.

[fol. 1259] Mr. Akolt: I think it is mentioned in one of those letters there. That is the reason I put that in there.

Trial Examiner Holden: Off the record.

(Discussion off the record.)

Trial Examiner Holden: On the record.

Q. I turn your attention to "Respondent's Exhibit 14-FF", a letter from yourself to Mr. Thomas, on May 22nd, 1936, stating "in connection with the termination on April 30th of the two above employees, due to the reduction in force in Big Muddy Field, and their refusal to accept a transfer of employment to other fields, and upon the assumption that Mr. Moore has not accepted our final offer of May 20th to return to work at Big Muddy, we are arranging to pass E & C forms terminating the employment of these two men." Now, do you know what you meant by that at that time?

A. I was passing E & C forms down to the payroll department in Denver, to put them on through the finishing routine.

Q. On to Ponca City?

A. Yes.

Q. Now, therefore, that would mean, would it not, Mr. Shannon, that if the "X" mark here were put on in the Ponca City office, that the Ponca City office received the E & C on Mr. Moore and Mr. Jones at the same time?

A. Not necessarily. Mr. Windsor, payroll clerk there, or the payroll supervisor in the Ponca City office, may have sent one of them back or held them up, or had various correspondence about them, all of which might have separated the forms, and they may have gone through any number of channels before they finally wound up.

Mr. Shaw: I have no further questions.

Mr. Akolt: I have no further questions.

Trial Examiner Holden: Witness excused.

(Witness excused.)

Trial Examiner Holden: There will be a ten minute recess.

(Thereupon, at 11 A. M., the hearing recessed for ten minutes.)



[fol. 1260]

After Recess

(Whereupon, the hearing continued, pursuant to recess, at 11:10 A. M.)

Trial Examiner Holden: The hearing is in session.

J. C. THOMAS, a witness called by and on behalf of the respondent, Continental Oil Company, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Akolt:

Q. You will please state your full name.

A. J. C. Thomas.

Q. Where do you live, Mr. Thomas?

A. I live in the Big Muddy Camp near Parkerton.

Q. How long have you lived there?

A. Well, just about 13 years. It will be 13 years the first of June.

Q. What is your occupation?

A. At present I am District Superintendent of Central Wyoming District, previous to February.

Q. Now, wait a minute. Of what?

A. Production department, Continental Oil Company. Previous to the first of February I was District Superintendent of the State of Wyoming.

Q. Production department, Continental Oil Company?

A. Production department.

Q. How long were you such District Superintendent of the State of Wyoming?

A. Since the fall of 1933.

Q. Now, as District Superintendent of those districts, what are your duties?

A. I have supervision over the producing operations and the drilling, the pipe lines and the gasoline plants.

Q. In all the fields that the Continental operates in your district?

A. In all the fields, yes, sir.

Q. And you became district superintendent over the State of Wyoming, when?

[fol. 1261] A. In September, 1933.

Q. What did you do before that time?

A. I was production foreman in Big Muddy Field from 1925 to 1933.

Q. For Continental Oil Company?

A. Yes.

Q. And what did you do before 1925, when you became production foreman at Big Muddy?

A. Well, I worked for the Texas Company for the 13 years preceding that date, in North Louisiana and Texas.

Q. You have been in the oil business since 1912, is that correct?

A. Since 1910.

Q. 1910?

A. Yes, sir.

Q. And you have been with Continental, the predecessor company, and the present company, since 1925?

A. Yes, sir.

Q. Have you been personally acquainted with all the men who have worked in the Big Muddy Field from 1925 down to date?

A. Yes, sir.

Q. Since you ceased to be production foreman at Big Muddy and became district foreman, you have, from what you say, retained your home and your office?

A. Yes, sir.

Q. In Big Muddy?

A. Yes, sir.

Q. Are you the superior officer of the field foreman at Big Muddy? Salt Creek, Lance Creek?

A. I am.

Mr. Shaw: Excuse me. Did you include Lance Creek in that?

Mr. Akolt: I did.

Q. Lance Creek, before February first and not since February first?

A. Yes, sir.

Mr. Shaw: I didn't want the record to be confused.

[fol. 1262] Q. The field foreman at Lance Creek is Mr. Rice?

A. Yes, sir.

Q. Did he, at one time, work in Big Muddy?

A. Yes.

Q. When?

A. He worked in Big Muddy, I believe, in '27 and '28, and was gone a short time, and came back in '29.

Q. In what capacity did he work in Big Muddy?

A. He was a head roustabout, gang pusher.

Q. And he was transferred to Lance Creek?

A. No, to Salt Creek.

Q. Salt Creek?

A. Yes, sir.

Q. And from Salt Creek to Lance Creek?

A. From Salt Creek to Lance Creek, that is correct.

Q. As district superintendent, do you have anything to do with the, either the discharges of employees, in your district, or the laying off of employees or the transfer of employees?

A. Yes, sir.

Q. What do you have to do with such matters?

A. Well, I talk over all matters of that kind, and investigate the recommendations of the foreman, and assist them in making up our minds as to what we are going to do about a lay-off or a transfer.

Q. Do I understand from that, then, that lay-offs, discharges, transfers, are subject to your approval?

A. Yes, sir.

Q. In your district?

A. Yes.

Q. And the same is true as to hiring men?

A. Yes, sir.

Q. Who is your immediate superior?

A. Mr. R. S. Shannon, division superintendent.

Q. And are your actions subject to approval by Mr. Shannon?

A. They are.

Q. Do you remember in the year 1936 when there was an [fol. 1263] increase in the weekly hours in Salt Creek, Lance Creek, and Big Muddy?

A. Yes, sir.

Q. Do you know when this increase became effective?

A. In different fields?

Q. In the different fields.

A. Yes, it was, my recollection is March in Lance Creek, and April in Salt Creek, and May in Big Muddy.

Q. What was the effect in increasing the weekly hours



from 36 to 48, on the number of men necessary to be retained in the field?

Trial Examiner Holden: I am wondering whether or not counsel are prepared to stipulate that due to the conditions at Big Muddy in the spring of 1936 a lay-off of approximately four men was required?

Mr. Shaw: Well, I cannot very well stipulate to that, Mr. Examiner. I think the time taken up by stipulation would be more, actually, than the time which counsel will take to question the witness.

Trial Examiner Holden: A number of witnesses have been interrogated on it, but proceed.

Q. It would take less men to operate the field.

A. It would take less men to operate the field.

Q. Did you have any discussion with Mr. Shannon on it, prior to say, April 1st, 1936, with reference to reduction of forces in Big Muddy?

A. Yes, sir, we had talked over the possibility of all the fields going on a 48 hour basis, and he told me to be thinking about it, working out our schedules.

Q. When was that, would you say, that you first talked about it?

A. Well, it was about in March, around the first of April, for the Big Muddy Field.

Q. Mr. Shannon, you say, told you by telephone?

A. Yes, sir.

Q. About what would be necessary to be done in connection with the working forces?

A. Yes, sir.

Q. Did you think about it?

[fol. 1264] A. I did.

Q. Did you have any further conference with Mr. Shannon and Mr. Bartels, the Big Muddy Field foreman, on or about April 1st, 1936?

A. Yes.

Q. Where was that conference?

A. In the Big Muddy Field.

Q. And will you proceed to state what happened at that conference?

A. Well, we had about made up our minds, who we wanted to transfer.

Q. Who had?

A. Mr. Bartels and I.

Q. And had you and Mr. Bartels discussed this before that time?

A. Well, we had from time to time in talking over matters, you have, sort of keep these things in mind, even though they may not, you don't know when they are going into effect, and as to this matter, we were checking on it for, just around the first of the month.

Q. What did Mr. Shannon ask you and Mr. Bartels to do at this April 1st conference?

A. He asked us to submit names of the men we wanted to transfer.

Q. Did Mr. Shannon make any statement to you that there were to be no discharges, if possible, to result from the increase in the hours?

A. Yes. That was stated, that there would be no lay-offs.

Q. Well, what did you and Mr. Bartels do when Mr. Shannon asked you to submit to him the names of four men to be transferred?

A. We gave him the names.

Q. Did you hear Mr. Bartels testify this morning?

A. Yes, sir.

Q. Did you hear him testify that you gave him the names later on the same day, after Mr. Shannon came back to the field?

A. I believe he did, yes.

Q. Is that correct?

A. That is as near as I can remember, yes.

[fol. 1265] Q. What names did you give to Mr. Shannon for transfer?

A. We gave him Jones, and Moore, and Whitlock, and Jackson.

Q. Now, Mr. Thomas, you were at that time district manager of the field, which included Lance Creek, Big Muddy and Salt Creek?

A. Yes, sir.

Q. Was there a problem involved in placing the men in the different fields in your district, due to the increase in hours, in all three of those fields?

A. Yes, there was.

Q. What was the problem that was involved?

A. Well, the conditions at the Salt Creek Field were just about the same as at Big Muddy. We had plans drawn for putting in powers at Salt Creek the same as at Big Muddy, which would mean less men in the long run, and the opera-

tions were going down, were deteriorating, while Lance Creek was picking up.

Q. Was there a gasoline extraction plant being installed at Lance Creek at that time?

A. Yes.

Q. Was there some drilling activity in Lance Creek at that time?

A. Yes, sir.

Q. The Continental, however, was not doing any drilling itself, was it?

A. No, it was all contract work.

Q. By contract work, you mean if there were any Continental wells being drilled, the Continental had entered into a contract with contract outfits to do the drilling for it?

A. Yes, sir.

Q. You say you and Mr. Bartels gave Mr. Shannon the names of four men to be transferred, Jones, Moore, Whitlock and Jackson?

A. Yes, sir.

Q. Will you please state now how you came to recommend these particular four men?

A. On Jones and Moore, they were judged on their ability, the trouble we had had with them, and their disagreeable dealings; and Whitlock and Jackson, although not [fol. 1266] among the best men that we have, they were fairly good, good enough to get by with, but they brought in, I figured them in that housing problem. We were building four new houses at Big Muddy, modern houses, and trying to do away with the tar paper shacks, the tar paper dwellings, they were not shacks, in reality, and these men, there were seven of these houses in a row, and we had to figure on, if possible, taking care of our men in the new houses, these seven in the four and by transferring Whitlock and Jackson to Salt Creek, that would make us needing two less modern houses.

Q. So the housing problem, from your standpoint, entered into the picture.

A. Yes, sir in my findings that I made.

Q. Well, now, there have been some men in the field who have had longer service records than Moore and Jones. Can you explain why you transferred or recommended for transfer, men with a longer service record?

A. Well, if a man, I figure, works five years or ten years and just gradually gets worse and worse, why, his service



doesn't have much to do with it, that is, the length of service.

Q. Will you please go into more detail in the reference in your answers as to Moore and Jones getting worse and worse, and about their abilities and such matters, and how that entered into the picture in your recommendations?

A. Well, when I went to Big Muddy in '25, 1925, Moore, at that time was on as a clean-out driller, and, say, that was in June, '25, and that fall, it took him practically all that time, it took me practically all that time to get wise to him, that he wasn't an efficient driller, and that was when the tools shut down and we transferred him to roustabouting to take care of him through the winter, or for the time being, which ever happened to be the case, and during this time as driller he got us into some pretty tight places, by losing tools, and in one particular case he just used poor judgment, and as I found out about a year after he had left, he told a deliberate lie, but then, at the time that I investigated it, why the crew that were working on the opposite tower, they had covered it up.

Trial Examiner Holden: May the dates of these incidents be fixed, please, as nearly as possible.

Q. Well, Mr. Thomas, on the incident you speak of—  
[fol. 1267] A. Well, I know the name of the well but I would have to look at the clean-out records to find the date.

Q. Well, can you give the year?

A. It would be '25, I think, and '26, 1925 and 1926.

Q. All right, now proceed.

A. And as he would go back to clean-out tools as a helper, he would always, well, he gave me the impression he was always trying to put something over, always promoting something, and I had made up my mind once or twice, to let him go on general principles, as an unsatisfactory worker, but I let Flanagan, who was the assistant division superintendent, and Mr. Dyer, who was foreman, I let them talk me out of it.

Q. When was Dyer foreman?

A. Well, all the time that I was there, from '25 to, I think Mr. Dyer was transferred in '28, and came back in 1930, I believe.

Q. What was he the foreman of?

A. He was production foreman in the field, the east-end of the field.

Q. And what were you at that time?

A. I was, oh, they called me field superintendent at that time, it was the old Continental line-up, and later when Mr. Dyer came back he was district superintendent, that was in, I believe, 1930.

Q. Proceed with your statement with reference to Mr. Moore.

A. And then later on, when I tried Moore on a rotary rig, and he made a fair, just a fair, rotary helper and when we were shut down, we would put him back to roustabouting. We tried him pumping at different times and he was always running after help to start the engine or make out his gauge tickets in the morning. We tried him in the garage, and the gang pushers reported that the trucks weren't greased at night like they were supposed to be greased, and I think that brings it up to about the time that he went under foreman Bartels. I think he was a roustabout in 1933.

Q. Well, you continued in touch with the situation as to Mr. Moore after Bartels became foreman?

A. Yes, sir. I didn't get much or regular information on him because I was in and out of the field, most of the time, but I remember one particular occasion when I drove into [fol. 1268] the yard and they were all getting into the trucks to go to work, and he was sitting there with his legs hanging down, and I lectured him on it, about being an old head there and he knew the safety rules. It looked pretty bad for one of the oldest men there to be deliberately paying no attention to them.

Q. What was the safety rule that you refer to?

A. It is about, no one is allowed to ride on a truck with their legs hanging over the side.

Q. Did you receive reports from Mr. Bartels from time to time as to the work that Mr. Moore was doing?

A. Yes, I would ask him how he was getting along, because I always had the impression that Mr. Bartels being a new foreman, that a lot of these old heads would try to put it over all the time, try to prevail on his personal friendship for them to just slip around and do more soldiering.

Q. Well, what reports did you get from Mr. Bartels as to the work Moore was doing?

A. Well, he said he was about, just about on a par, like he had always been. I have heard, when a gang would bunch up around the office mornings, I had heard some re-

marks passed about one of the pushers said that they were, I think it was when they were working 36 hours a week that he told Dinty that they were still working 36 hours, meaning that he wasn't putting in even that. But that was just a remark that was passed.

Q. Well, let's go to Mr. Jones. How long did you know Mr. Jones?

A. Well, the first time I remember seeing Jones was when he came over from Salt Creek to Big Muddy as a rotary helper.

Q. About what year?

A. That would be about '26, I believe, 1926.

Q. And how long did he stay in Big Muddy then as a rotary helper?

A. Well, they stayed until that well was completed, it was a rather long job. The first hole was lost in the Wall Creek Sand and they had to skid the rig, and drill another one. It was quite a while.

Q. Did he remain continuously in the Big Muddy Field after that?

A. No, he went to Walden, Colorado, to do some drilling [fol. 1269] there, the crew went and Jones went with them, and while there he was injured in some sort of an accident, on the derrick floor, and when he got better he was sent back to Big Muddy, to be put to work there.

Q. About when was that?

A. That was, I would say, about '28, I believe, some time in '28.

Q. Did he work under you in the Big Muddy then?

A. When he came back, yes.

Q. What kind of work did he do?

A. Well, I put him roustabouting, and helping around with the different gangs and he finally wound up, I believe, he was running a pipe machine at the machine shop under Bert Fuller, making nipples, or helping around the machine shop and that job wound up there at the shop and that brought me to the fact that Jones would have to go back out to the field. It was pretty hard to find a place for him because of the fact that the pushers didn't like to work him.

Q. You say pushers?

A. They reported to me that he could do the work, if he would, but it took a lot of argument, to get him to do it, so after this job finished up at the machine shop, I had a talk



with Jones and told him I didn't know what I could do with him, outside of paying him off, because nobody seemed to want him, he was so unpopular. And he said "Well, if you will give me a pumping job, I will make you a good man as long as I am here."

Q. About when was this, what year?

A. That would be in '29, after the machine shop shut down.

Q. And did you give him a pumping job?

A. Yes, I think I picked him out a choice job, I know it was a raise in wages for him. At that time I think he went on as a special pumper on the Glenrock Sheep lease.

Q. Did you observe his work as a pumper from that time on down to 1936?

A. Well, yes, till the time I left there in '33 and then just at times after that.

Q. Well, please state what you did observe in connection with his work as a pumper.

[fol. 1270] A. Well, to get the class of work that we have got to get out of the men, it took a lot of persuasion.

Q. What do you mean by that?

A. Well, it took a lot, a lot of talk to get him to do this and do that, any time.

Q. When you say "do this and do that", you mean work that was necessary to be done as a pumper?

A. Yes, maintenance, and general upkeep. About every time you would call his attention to something that you wanted done, he either had another way, or there was an argument about it.

Q. Was Mr. Jones what you considered a good pumper in comparison with the other pumpers in the field?

A. No, I wouldn't say that he was as good a pumper.

Q. What reports were made to you in reference to his work after you ceased to be field foreman, and became district superintendent?

A. Well, from time to time, foreman Bartels, I would ask him how he was getting along here and there and he would bring up items that happened.

Q. What items do you refer to?

A. He was having trouble with this pumper or that roustabout, or this, such and such a place, trying to get it brought up in the shape that he was supposed to, and I would look around and see some places in the immediate work to clean up and repair or change.

Q. These reports that you are referring to that Mr. Bartels, made to you, were they about Jones, or somebody else?

A. Well, Jones and different men.

Q. Well, are there any instances which you recall in which he reported to you about Jones?

A. Well, he said he was having trouble with Jones continually to keep up his work, and he wasn't up to standard, he thought he was getting worse.

Q. Did you have any conversation with Jones with reference to a fire on his lease?

A. Yes.

Q. When was that, do you recall?

A. I think it was in the late winter of '35 or '36. It was cold, it was when it was cold. About the spring of '36. There was a fire up there at No. 19.

[fol. 1271] Q. That means Well No. 19?

A. Well No. 19 on the R. B. Whiteside Lease, and it was one of those rebuilt wells, had a good derrick floor, and a clean one. It was all filled under the derrick floor with dry dirt, everything was fixed up, and the fire occurred right around the casing head, and as Jones testified, that is what I told him. I said it looked to me as if he had thrown in the clutch, and lighted a cigarette, and thrown the match down, and he told me, he said he didn't know how it started. And then I afterwards learned from Bartels how he explained it to him, and I told Bartels then, "Well," I said, "I recommend that you pay Jonesy off", because I didn't see in a case of this fire how in the world it happened, because if a man would run around with a burning rag in his pocket from the time it takes him to start an engine, turn the water into the engine, and go out and pull the clutch, why it didn't look possible.

Q. And that was the explanation he gave?

A. That he gave to Bartels.

Q. Gave to Bartels?

A. Yes, I didn't get that, I got that from Bartels. He told me he didn't know how that occurred.

Q. Well, Mr. Thomas, you have explained or told us as to the work performed by Moore and Jones. How does that enter into choosing them as 2 of the 4 men to be recommended for transfer?

A. Well, I figured they were two that we could get transferred clear out of the district, and by so doing we would sure help, I would help my organization.

Q. Did you, or you did know, did you not, that both Moore and Jones were members of the local Union 242?

A. Yes, sir, I did.

Q. You knew, did you not, that they were members of the working Committee of that Union?

A. Yes.

Q. You had met with that Working Committee from time to time, had you not?

A. Yes.

Q. Along with Mr. Shannon and Mr. Bartels, or one or both of them?

A. Yes.

[fol. 1272] Q. Well, how did it come that you recommended them for transfer, knowing that they were members of the Union?

A. Well, I didn't let that have anything to do with it, didn't consider the fact that they were Union men, because there were, as far as I knew, absolutely there were, at least half of the men were Union men.

Q. Are you sure, Mr. Thomas, that the fact that Jones and Moore were members of the Union, and were members of the Working Committee, did not influence you in suggesting their names for transfer?

A. Yes.

Q. What is your answer?

A. Yes, I said that it didn't influence me.

Q. You recommended for transfer two other men, Whitlock and Jackson. I think that you eventually transferred at least Jackson to Salt Creek wasn't it?

A. Yes.

Q. Well, then, Whitlock was not transferred, was he?

A. No.

Q. How does it come that Whitlock was not transferred?

A. Well, the receiving foreman thought he wouldn't meet with his requirements, and they compromised on Leo Canning.

Q. Did you have supervisory jurisdiction over both Bowen in Salt Creek, and Whitlock?

A. Yes, sir.

Q. Well, how could Bowen refuse to accept Whitlock if you had recommended him for transfer?

A. Well, the recommendation wouldn't be, my recommendation wouldn't be final, foreman in the fields that are



responsible for getting the jobs done, you just can't ignore their wishes altogether, they have to be considered on these transfers.

No matter how good a man you would want to send to a foreman, and if he didn't like him, why it would disrupt his organization?

Q. Well, what prompted you to pick out Canning, when Bowen didn't want Whitlock?

A. Well, Canning was one of the men that fitted in with this housing problem, and another thing, Leo had worked [fol. 1273] over there years before, and he knew more or less about the field, and knew the different, had some friends there.

Q. Well, now, you recommended Whitlock, Jackson, and Canning for transfers to Salt Creek. Why didn't you recommend Jones and Moore for transfer to Salt Creek?

A. Well, if I recommended and insisted on them being transferred there, why, my district would be in, I might just as well leave them in Big Muddy. I would be in the same fix. I wanted to get them out of the district, where I wouldn't be bothered with them any more and where they would get a better chance under different men, and different conditions, to get along, if it were possible to get along.

Q. Well, what happened that you participated in after you decided upon the transfers out of the district of Moore and Jones?

A. Well, the notice was given to transfer these men, to foreman Bartels, and he notified—

Trial Examiner Holden: If we could have the facts a little more clearly established on the record, it would be helpful.

Mr. Akolt: What facts?

Trial Examiner Holden: As to the time the notice was given, and when.

Witness: Well, the notice was given to foreman Bartels. I didn't—

Trial Examiner Holden: You testified that notice was given to foreman Bartels concerning the transfer of these men?

A. Yes.

Q. When?

A. Somewhere in the latter part of April.

Q. Did you give a notice to Bartels about these transfers?

A. I remember something about, that I got a letter, and phoned Bartels about it from Lance Creek, or else the notice was phoned to me at Lance Creek.

Q. Phoned to you from where?

A. By Mr. Shannon from Denver.

Q. And this was the latter part of April?

A. Yes, sir.

Q. And what did you do?

[fol. 1274] A. Notified Bartels.

Q. To do what?

A. To tell them about their transfer.

Q. And did you ever talk to Moore and Jones about their transfer, personally?

A. No, I never met them.

Q. Did you have a conference with Mr. Shipp and Mr. Erwin, or either of them, along about April 9, with reference to their transfers?

A. Yes.

Q. How did you come to be in on any such conference as that?

A. Well, I just happened to be in Big Muddy. There was time after time that I would come in at night, and leave the next morning for Lance Creek. That just happened to be one of those times, the reason I was there.

Q. Tell what happened.

A. Well, they wanted to know about who was responsible for the transfer of the men, and why, and wherefore, and about the 48 hour week.

Q. Well, what explanation did you make, if any, as to the transfers?

A. I told them that, I don't just remember what I told them, but I believe I said I had nothing to do with the transfers. I believe I told them that, and Erwin asked me about the 48 hour week, and I said yes, it was going to be a 48 hour week.

Q. Why did you tell them you had nothing to do with the transfers?

A. Well, I didn't, at the time it made me kind of sore and I didn't think it was any of their business.

Q. Who was that, Erwin and who?

A. Erwin, and Moore and Shipp, I believe that is who it was.

Q. Did Moore make any statement there at that time, as to whether he would or wouldn't accept the transfer?

A. Not to my knowledge, no.

Q. Did Moore ever tell you personally that he would or would not accept the transfer?

A. No, he never did. I never saw him.

[fol. 1275] Q. Did Jones make any statement to you personally with reference to the transfer?

A. No.

Q. You never discussed it with Jones personally?

A. No.

Q. Did Bartels make any report to you on any conversations that he had with either Moore or Jones about the transfers?

A. Yes.

Q. What report did Bartels make to you?

A. Well, it was just similar to his testimony here.

Q. That Bartels gave on the witness stand here in this case?

A. Yes, that is my recollection.

Q. Well, did you correspond with Shannon with reference to these transfers?

A. Yes, I sent him a telegram.

Q. I refer you to "Respondent's Exhibit 14-S", which purports to be a telegram dated May 1, 1936 from you to Shannon, and reads: "Jones refuses transfer to Hobbs." Did you send that telegram?

A. That is pretty hard to say. My name is signed to it there.

Q. Well, you did receive a report from Bartels, did you not, as he testified on the stand?

A. Yes, and he phoned me at different times when I was at Lance Creek.

Q. Well, did you report to Shannon that Jones had refused the transfer?

A. Yes.

Q. Either by wire or by telephone?

A. That one right there, by wire.

Q. Now, I refer you to Shannon's letter to you of May 4, 1936, "Respondent's Exhibit 14-X", and "14Y", in which Mr. Shannon enclosed a letter addressed by him to Mr.



Moore, and dated May 5, 1936, and asked you to discuss this, Moore's refusal, and told you in the concluding sentence: "If he elects to go back to work in his previous status, I will ask that you give him this letter, a copy of this letter is attached hereto." Did you give that letter to Mr. Moore?

[fol. 1276] A. No, I didn't.

Q. What did you do with it when it was received?

A. I turned it over to foreman Bartels.

Q. With what instructions?

A. To give him the letter. In fact I don't believe I caught that "if he elects to go back to work", in the original letter.

Q. But you gave the Moore letter to Bartels with instructions to deliver it to Moore?

A. Yes, sir.

Q. Did Bartels ever report to you concerning what he did with reference to delivering the letter to Moore?

A. Yes, sir, he said that he had given the letter to Moore, and Moore read it, and threw it back in the car, didn't retain it.

Q. Now, I call your attention to Mr. Shannon's letter to you of May 20, 1936, "Respondent's Exhibit 14-EE", with which he enclosed another letter to Mr. Moore, of May 20, 1936, "Respondent's Exhibit 14-DD". Will you look at these two letters and see if that refreshes your recollection?

A. That is the one there.

Q. That is the one what?

A. That is the one that Moore read, and threw back into Bartels' car.

Q. That is "14-DD"?

A. Yes.

Q. This letter says: (reading letter into the record) Did you instruct Mr. Bartels to deliver that letter to Mr. Moore?

A. Yes.

Q. Did Mr. Bartels make any report to you as to what he did with the letter?

A. Yes, he told me he had given it to Dinty and Dinty read it, and tossed it back in the car, and I believe I wrote Mr. Shannon or, either wrote him or called him, and gave him the circumstances.

Q. I refer you to your letter of May 22, 1936, to Mr.

Shannon, "Respondent's Exhibit 14-GG", which reads: (reading letter into the record.) Did you write that letter?

A. Yes, I did.

Q. That reported the circumstances as they transpired at that time?

[fol. 1277] A. It did.

Q. Did Moore or Jones ever make application for re-employment to you, in May of 1936?

A. No.

Q. That includes both of them, does it?

A. Yes, sir, it includes both of them.

Q. Did you ever have any discussion with either of them with reference to their termination of employment with the company?

A. No, I don't believe I did. Jones asked me one morning, four or five days after, or three or four days after the 1st of the month, something about whether I had any work for him to do. He had come up to the warehouse ready to go to work, and he asked me whether I had anything for him to do and I said: "No, have you seen, did you ask Bartels", and about that time Bartels came out, and told him he didn't have anything. That is the only conversation I have had with either of them to date about their going back to work.

Q. Some of these letters from Shannon to you in connection with this matter, did they write here when you were over at Lance Creek?

A. Yes.

Q. Were you at that time spending part of your time in the Lance Creek field?

A. Yes, about 75 or 80 per cent of my time.

Q. If a letter reached you here in Big Muddy from Mr. Shannon and you were over in Lance Creek, would Bartels call you and tell you there was a letter there for you?

A. He would.

Q. Would he open it and read it to you?

A. Yes, he would ask first, if it was marked "personal" or "confidential" he would let me know about it, either he or the clerk, and would ask whether I wanted it opened and read.

Q. And if you did so, then you would give Bartels instructions as to what you wanted done about it?

A. Yes.

Mr. Akolt: That is all, Mr. Thomas.

## Cross-examination.

By Mr. Shaw:

Q. Mr. Thomas, as I understand, at the Big Muddy field, [fol. 1278] the foreman recommends a discharge to you, is that right?

A. Well, not every time. I mentioned it to him, that I think he should recommend a man for transfer.

Q. You think he should recommend the discharge back to you, don't you?

A. Check, right.

Q. And before the man is finally discharged, is the case taken up with Mr. Shannon?

A. Yes, we would include him in it.

Q. In the normal course of events?

A. Yes, unless it was something that was absolutely out of line, something that you wouldn't have time to get your breath on, something you would have to act on the same minute.

Q. If somebody took a swing at the foreman, or something, there would be no question about that?

A. Well, I don't know about that, that is not always a cause of dismissal, beating up the foreman.

Q. Well, generally, in normal cases of discharge, where the circumstances surrounding the discharge are not outrageous, the foreman recommends to you, and you recommend to Mr. Shannon, and when Mr. Shannon approves, the man is discharged, is that it?

A. Yes, sir.

Q. So, except in very rare cases, the foreman does not have the power to discharge, does he, without the approval of you and Mr. Shannon?

A. Well, let's see. I would say that that is correct in the main.

Q. Now, what about hiring a man, who decides when a man is to be hired?

A. Well, as in any change of schedule, like as if we were allowed more men, or in case a man is sick, and we put a man on temporarily to fill his place, or if a man is transferred and we want to put on an entirely new man in his place, that is mostly up to the foreman that is going to work him, subject to my approval.



Q. Oh, it is subject to your approval?

A. Yes, sir.

[fol. 1279] Q. Now, is your approval subject to Mr. Shannon's approval?

A. No, I wouldn't say it was.

Q. So hiring is a little bit different than firing a man, isn't it, in that it doesn't have to go to Mr. Shannon?

A. Yes.

Q. But even at that, the foreman hasn't got the right to hire, has he, without your approval?

A. No, not altogether.

Q. So the foreman has not got either the right to fire or the right to hire, has he?

A. Only in such cases as I mentioned.

Q. Only in the very rare cases?

A. Yes.

Q. Now, as I understand it, the transfer of these four men in April of 1936, according to your testimony, was due to a reduction in force necessitated by the 48 hour week, is that right?

A. Yes, sir.

Q. Now, two of the men were transferred because they were notoriously incompetent, inefficient, that is Jones and Moore, is that right?

A. Well, that would be a good way to explain it, yes.

Q. They were the two worst employees in the field, according to you?

A. Yes.

Q. Now, the other two men who were transferred to Salt Creek were not the two worst employees in the field, or they were not in the group of bad employees, but I believe you said were pretty good men, Jackson and Whitlock, isn't that right?

A. That is right.

Q. So you had two different categories of men that were transferred, two fellows that were transferred because they were inefficient, and two other fellows that were transferred because you wanted their houses?

A. That is right.

Q. Now, as I understand it, Jackson's transfer, Whitlock's anticipated transfer, and Canning's transfer, had nothing to do with their efficiency as workmen? They were

[fol. 1280] all, the three men were good workers, they would work well in the organization in Big Muddy?

Mr. Akolt: You have about fifteen questions there, with no answer to any of them.

Mr. Shaw: I will withdraw the question.

Q. As I understand it, the transfer of Jackson and Canning had nothing to do with whether or not they were inefficient workers?

A. Yes, that was, if they had been what I considered the best workers, why, we wouldn't have transferred them.

Q. Well, were they somewhere in the middle?

A. Yes, in between.

Q. They would work well in either place, either in Big Muddy or Salt Creek?

A. Yes.

Q. But the main thing in the transfer of these men - as to settle the housing problem, isn't that true?

A. That was my idea of it.

Q. Now, Mr. Moore had been a bad employee, to your knowledge, ever since 1928?

A. Yes, shortly after, shortly after I got to Big Muddy and saw his work, I would say a month or two.

Q. And yet you kept him on the payroll from 1925 until 1936, is that right?

A. That is right.

Q. Do you think that is efficient business?

A. Is what?

Mr. Shaw: Read the question.

(Question read by the reporter.)

A. A fishing business?

Q. Is it efficient?

A. Oh, no, on the face of it, no, I don't consider it efficient business.

Q. Well, is it fair either to the company or the men to keep a man who is inefficient on the pay roll that number of years?

A. Well, if you, if the man above you won't let you fire a [fol. 1281] man, what are you going to do about it, in the position that I was in?

Q. Well, I am not talking about you personally, Mr. Thomas. I am asking you, if in your opinion, it was sound

policy to keep that man on when you know he was no good?  
I am not criticizing you at all.

A. Well, I don't know how to answer your question.

Q. Well, as I understand, if you had your way, Moore would have been fired in 1925.

A. Yes, he would.

Q. But you didn't have your way?

A. That is right.

Q. Your superiors wouldn't allow you to fire Mr. Moore?

A. That is right.

Q. And how long did that situation exist?

A. Well, that covered a number of years.

Q. Now, why did the attitude of your superiors toward Mr. Moore's employment change, so that they would allow you to discharge Mr. Moore?

Mr. Akolt: They never did let him. That is contrary to the evidence.

Q. Or allow you to get rid of Mr. Moore out in the field?

Mr. Akolt: I object to that too, because there is no evidence of any change, simply with reference to transfers.

Trial Examiner Holden: Sustained.

Q. Do you know whether the attitude of your superiors ever changed?

A. No, as far as firing Dinty, no, I don't.

Q. Now, you were foreman of Dinty Moore, weren't you?

A. Yes.

Q. And you certainly didn't have the right to fire him?

A. The way it turned out, I didn't, yes.

Q. Do you know why Moore was kept on during all those years of inefficiency, and incompetency?

A. Well, I guess the best way to explain it would be that every time that we talked of getting, of moving him along, somebody interceded for him. Some times I would make up my mind, and then change it.

[fol. 1282] Q. Did Moore ever know about these close escapes from discharge that he had, or were they kept from him?

A. I knew that he knew about the case at Sheep 14, when he dropped a rope socket, and we had to get another crew to finally fish it out.

Q. That was back in 1925, wasn't it, 1926?



A. Yes, somewhere along in there, I don't know the exact year.

Q. Now, this man Moore has a service running back, in "Respondent's Exhibit 14-I", to 1924. He was one of the oldest men in your field, wasn't he?

A. '24. Let's see, there are one or two older than Dinty.

Q. And during that time he had been employed on practically every job in the field, except as a pumper, hadn't he?

A. Well, we had had him on as a pumper. He had a combination job once at the booster.

Q. That was back in 1931, I believe, wasn't it?

A. It was one of those years when they shut down the tools, and he had switched back into a roustabout job, or something else.

Q. His real job was dressing tools, wasn't it?

A. As a tool dresser, yes.

Q. And you gave him this other work to keep him around so you would have a tool dresser on hand when you needed one?

A. Well, yes, and to take care of him.

Q. Well, this provided you with a tool dresser when you would need one, didn't it?

A. Yes, that is it.

Q. And not the charity idea, you wanted to have him around when you needed him?

A. Yes, sir.

Q. And he was alright as a tool dresser, wasn't he?

A. Yes, on cleanouts.

Q. And he would be a roustabout until a tool dressing job came up and then he would go out on that job, and then he would go back to roustabouting after that job was over, wouldn't he?

A. Yes.

Q. Roustabouting is common labor, isn't it?

[fol. 1283] A. To a great extent, yes.

Q. Did you have any problems with Dinty Moore getting along with the men? Was he unpopular like Jones was?

A. Well, not in the same manner. Dinty was more of a clown with his dealings with the men, and was always trying to promote something and it would be my idea that of the 2 men, Moore would be the more popular, because he always tried to be a local politician, was always trying to promote himself a county job, and he would be electioneering and working at the same time.

Q. And did a lot of talking too, didn't he?

A. Oh yes, yes indeed.

Q. Did that have anything to do with his work?

A. In a great many instances, yes.

Q. What do you mean?

A. He couldn't talk and shovel at the same time.

Q. There is some statement here about Moore being an old time driller, and being dissatisfied with being in a roustabout's position. Did you know anything about that?

A. That was in reference to the statement about tool dressers and drillers?

Q. Yes.

A. When they are demoted down to a lower level?

Q. Yes.

A. Yes, that has been, it has been my experience in the oil field, that that is absolutely correct.

Q. What is absolutely correct?

A. That when you take drillers and tool dressers on cable tools, and also drillers and helpers on rotary tools, and give them just plain lease work, roustabouting or pumping, that they are generally unsatisfactory.

Q. It would be like taking the president of the company and putting him on the ditch for a while, wouldn't it?

A. Yes, he wouldn't be any good. It is just one of those things, not necessarily because it is a demotion.

Q. Well, it seems to hurt their pride, I suppose, is that what you mean?

A. Well, there are some of them, now we had some good rotary floormen at Lance Creek, that got jobs on the leases, and I think they only lasted about thirty days.

[fol. 1284] Q. You mean they had to be discharged at the end of thirty days?

A. Yes, those that didn't walk off of their own accord, that were willing to catch it.

Q. Now, Jones had been off and on a cable tool man ever since he started in Big Muddy in 1924, is that right?

A. Jones?

Q. Or Moore.

A. Moore, yes.

Q. Well, he lasted more than thirty days, didn't he?

A. Yes.

Q. Well, you ordinarily do fire these fellows, do you, if they don't do good work, these cable tool men, like you did at Lance Creek?

A. Well, that case I was telling you about at Lance Creek wasn't the Continental Oil Company. It was a neighboring Company.

Q. Now, as I understand it, Jones was not a good pumper?

A. Right.

Q. He was well known around there as not being a good pumper, is that right?

A. Right.

Q. He was not a good roustabout, even?

A. No.

Q. He was such a poor roustabout that you promoted him to pumping, is that right?

A. Yes, that is right.

Q. And you increased his wages?

A. That is right.

Q. Now, there is something here about a fire on Jones' lease. Did you believe Jones was really at fault in connection with that fire?

A. Why, yes, I don't see how anyone else in the world could have been at fault but Jones.

Q. Have you finished?

A. Yes.

Q. Did you make an investigation of the cause of the fire?

A. I talked to Jones, and talked to Bartels, and talked to DeClue, that was the regular pumper on that lease.

[fol. 1285] Q. Did you find out through your investigation anything about how the fire was caused?

A. No, I didn't, the actual cause. All I had was just surmise.

Q. Was the fire very damaging?

A. No, practically no damage. We got to it in plenty of time.

Q. Now, you have had other fires out there, have you not?

A. Yes, sir.

Q. Is it customary that a man be discharged on account of a fire?

A. Yes. Since rebuilding our property, and going on the present plan, 1929, of the new Continental, where we eliminated practically all the old fire hazards, there is practically no excuse nowadays for anyone to let a rig burn up.

Q. In other words, you have cleaned up these floors, you have put in new concrete floors, and taken away many of the things that might cause fires?

A. Yes, sir, we have.



Q. And that has cut down your number of fires, I suppose?

A. Oh yes, it has.

Q. Now, you said, you suggested at that time to Bartels that he discharge Jones?

A. Yes.

Q. Well, doesn't Bartels follow your orders?

A. Oh, not to the letter, no. He begged off for Jonesy that time.

Q. Well, what was the theory of begging off for Jonesy at that time? What did he say about it?

A. Well, he wanted to give him the benefit of the doubt. We had a theory as to how it really caught fire, but there was nothing, we couldn't bring in proof.

Q. But you did hold that against him when you transferred him, or offered him a transfer?

A. I did, yes.

Q. Now, as I understand, you began to talk about the transfer of these four men with Mr. Shannon about the 1st of April?

A. Yes, sir.

Q. But even before that time, sometime in March, you and [fol. 1286] Mr. Bartels had been anticipating your discussion with Mr. Shannon, and had been discussing the men to be transferred?

A. Yes, we had.

Q. So that when Mr. Shannon came to talk to you about April 1st, you were pretty well prepared with your names?

A. We were, yes.

Q. And you immediately suggested the four names, Jones, Moore, Whitlock and Jackson, I believe?

A. Yes.

Q. Now, when did these conversations concerning the transfer of these four men in March begin? That is, before Mr. Shannon's conversation?

A. What was that question?

(Question read by reporter.)

A. Well, we knew that the forty eight hour week was coming along, and it would take less men. We naturally—

Trial Examiner Holden: Read the question.

(Question reread by reporter.)

Mr. Akolt: I suggest the question is not clear.

Mr. Shaw: I will withdraw the question.

Q. When was the first time you and Mr. Bartels, without the presence of Mr. Shannon, discussed these four transfers?

A. That was about the first of April, or along about the end of March.

Q. Well, now, I thought you and Mr. Bartels had been talking about this before you talked to Mr. Shannon the first of April?

A. We had, in the latter part of March.

Q. You mean about the week before you talked to Mr. Shannon, you and Mr. Bartels had begun to talk about this?

A. Yes.

Q. Now, that was about six weeks after you and Mr. Bartels had met with Mr. Moore, Mr. Jones, Mr. Simon, and Mr. Shipp, on a proposed contract between the Union and the Company, wasn't it?

[fol. 1287] A. Up here at Casper?

Q. Yes.

A. Yes.

Q. That was on February 6, I believe?

A. Yes, I believe it was.

Q. When did you first find out that the forty eight hour week was going into effect?

A. In all the fields, or in Big Muddy?

Q. In Big Muddy.

A. Well, I wouldn't know without seeing the exact date of the letter.

Q. Well, when did you first find out that the forty eight hour week was going into effect in all the fields?

A. Well, I think the instructions came out one at a time, as to the separate fields. That would be March at Lance Creek, April at Salt Creek, and May at Big Muddy.

Q. Well, at the time you had this meeting on February 6th with the Union committee and Mr. Shipp, did you know you were going on a forty eight hour week at that time?

A. I don't believe I did, I don't remember.

Q. And you wanted to get Moore and Jones out of the district, is that right?

A. Right.

Q. You didn't want to turn them over to another foreman in your district, because that wouldn't take away the fundamental problem, would it?

A. No. I did contact foreman Rice at Lance Creek, to see whether there was any way he could take them in there, and he said he wouldn't have them, that he had known of their work so long that he wouldn't have them.

Trial Examiner Holden: Might the facts in connection with that incident be stated on the record, please.

Q. When did you talk to Mr. Rice?

A. Oh, it was somewhere around in the latter part of March, right about the first of April, I imagine.

Q. Just before you had your talk with Mr. Shannon?

A. Yes, and in between. That would be about the time.

Q. And where did you have this talk with him?

A. With Rice?

[fol. 1288]. Q. Yes.

A. At Lance Creek.

Q. He said he wouldn't have Moore and Jones?

A. Yes.

Q. Or either one of them?

A. Yes.

Q. Was there any more objection to one than there was to the other?

A. I wouldn't say that he had, only when he was pushing gangs in, head roustabout in Big Muddy, he wouldn't consent to have Jones put on his gang.

Q. Now, when Shipp and Erwin and Moore came into see you on the 29th of April, you said that you were so mad that you didn't think it was any of their business about these transfers?

A. Yes.

Q. Why were you mad, and why did you think it wasn't any of their business?

A. Well, there had been, they were all talking at once, and I didn't think it was any of their affair to go into all the explanation, but as far as the actual responsibility of the transfers, I could have told them that it started with me, but I didn't know where it ended.

Q. Well, why didn't you tell them that?

A. Well, I just got mad, I guess, and didn't tell them.

Q. Now, had you followed the policy of not disclosing to the men in conference what was the truth of the situation, in your earlier meetings with the Union?

A. Well, I don't know that I had.



Q. You had been pretty frank, pretty truthful, hadn't you?

A. I think so.

Q. Why did you change your attitude at this particular meeting?

A. Well, I couldn't say.

Q. As a matter of fact, Mr. Thomas, by April 29, 1936, the Union wasn't a very important factor in the Big Muddy field, was it?

A. Well, I really don't know about that.

Q. Well, let's look it over. Here is the Workmen's Com-[fol. 1289] mittee, the fellows who had carried the ball for the Union in the Big Muddy field for a good many years?

A. Yes.

Q. Their membership at a very low ebb, you knew that, didn't you?

A. Well, I didn't know how low an ebb their membership was. I knew that, I didn't know absolutely anything about it, except the members that were working for the Union, I knew that they were bound to be Union members, and I knew Erwin was a Union man.

Q. And you knew, did you not, what the effect on this Union of transferring these two men would be?

A. Well, from my viewpoint I couldn't see where it would affect that Union any.

Q. Well, have you ever been a member of a Union?

A. No, I haven't.

Q. Did you ever consider what effect it might have on a Labor Union when the officers were transferred out of the field, or discharged?

A. No, I never gave it a thought.

Q. You don't know how the men would feel about how the Company would feel toward their joining that Union?

Mr. Akolt: It sounds to me like this is pretty complicated.

Trial Examiner Holden: Is there objection?

Mr. Akolt: Yes.

Trial Examiner Holden: Sustained.

Q. You don't know what the reaction on the men would be if their leaders were transferred out of the field to some far-away point, or were discharged?

A. Well, from my viewpoint, I don't think that the leader-

ship of these two men amounted to much in any Union. I think the main strength of the Union is in the President.

Q. Well, they were the fellows on the Workmen's Committee that caused you all the trouble in these negotiations that you had?

A. Well, they didn't cause me any trouble.

Q. You said when you started to testify this morning that Jones and Moore, the cases of Jones and Moore were "dis- [fol. 1290] agreeable dealings", "the trouble we had with them." What disagreeable dealings and trouble, did you have with Jones and Moore?

A. Well, I could, about the only way I know how to explain it is that you go to a man and tell him to do this, or do that, and he is always arguing, he is always putting up an argument, or he has a better way to do it, you ask him to do one thing, and he complains about another, and after just so much of that, why, you are bound to know that it is a disagreeable dealing.

Q. Now, Mr. Thomas, you knew that these men that came in to see you on the 29th of April had a right to know the story why these men were transferred, didn't you?

A. Well, I didn't know whether they did.

Q. They were the representatives of their men, were they not?

A. Yes.

Q. Their men had a grievance, did they not?

A. Yes, they claimed to have.

Trial Examiner Holden: It is now 12:30. We will stand recessed until 2 o'clock.

(Thereupon, at 12:30 p. m. the hearing recessed until 2 p. m.)

#### After Recess

(Thereupon, the hearing continued, pursuant to recess at 2 p. m.)

Trial Examiner Holden: The hearing is in session.

#### Cross-examination of Mr. Thomas continued:

Q. You knew that these men who called upon you had an interest in finding out why Mr. Jones and Mr. Moore were transferred, did you not?

A. Yes.

Q. So they had some business, there, didn't they?

A. Yes, in that respect.

Q. Always before when these Union men had come to see you, you had thought that they had some business, didn't you?

A. Yes, more or less.

[fol. 1291] Q. And how much more, and how much less, depended upon the situation at the time?

A. Well, it would depend on the circumstances, yes, sir.

Q. Did you tell them who was responsible for the transfers?

A. No.

Q. As I understand it, Mr. Thomas, the Union asked to take up with you the various men who had been transferred, in comparison with the various seniority qualifications of the employees in the Big Muddy field, is that true?

A. Repeat that question please.

(Question read by reporter.)

A. Well, do you mean at this particular time?

Q. Yes, at that meeting.

A. Well, now I don't remember much what went on at that meeting.

Q. Well, Shipp said something like this on the stand as I recall: He said "we wanted Mr. Thomas to sit down and talk over with us the men that should be entitled to a transfer, we wanted to take a list of the men, and sit down with Mr. Thomas and go over the transfers." Do you recall that?

A. No, I do not.

Q. You don't recall that?

A. No.

Mr. Shaw: I think that is all Mr. Thomas.

Mr. Akolt: I think that is all, Mr. Thomas.

Examination.

By Trial Examiner Holden:

Q. Mr. Thomas, with reference to Mr. Moore and Mr. Jones, I understood you to say something to the effect that you understood the main strength of the Union was in the President?

A. That is my opinion of it, yes sir.



Q. What was the basis for that opinion, please?

A. Well, my opinion of these two men in question.

Q. But as to the President, what basis did you have for your opinion that he was the main strength of the Union?

A. Well, I have a great regard for Mr. Erwin. We have been there for practically the same length of time. And that is the kind of a man that impresses me as being honest, and [fol. 1292] a square shooter; and a better foundation than these other two men.

Q. Beyond that do you have any basis for your statement that he was the main strength of the Union?

A. No. No, just my opinion of the character of the three men.

Q. At the time that the forty hour week went into effect in 1937, did you have any discussion with Mr. Bartels as to what men should be employed?

A. Yes, sir.

Q. Did you and Mr. Bartels consider possible men, or did you merely approve such men as Mr. Bartels suggested?

A. I approved his selection.

Q. Without discussion or with discussion?

A. No, we talked them over as to whether they would fit in the organization for the future.

Q. Did he state to you why these particular men were proposed?

A. Well, nothing more than that he liked their work, and that they had worked on and off before, and one of them had worked quite a long time for us previous to that time.

Q. So far as you know, so far as you were concerned, was any consideration given to the possibility of reemploying Mr. Jones and Mr. Moore?

A. No.

Q. Why?

A. Well, I don't, I didn't think they would help our organization any, and I had already made up my mind before that time as to the quality of workmen they were.

Q. I understood that primarily the reasons why they lost their jobs was because, on account of the increase in hours of work?

A. Yes, sir.

Q. Is that right?

A. Increase in hours of work, when they went into the forty eight hour week.

Q. So I don't understand why no consideration was given

to their reemployment when the hours were again reduced. [fol. 1293] A. Well, I wouldn't know, other than we just didn't want that type of men.

Q. With reference to the transfer of Mr. Jackson and Mr. Canning, I understood from Mr. Shannon's testimony that that matter was in your hands?

A. Yes, sir.

Q. And you took care of it?

A. Yes, sir.

Q. Tell me, please, just what was done about arranging with Mr. Bowen for the transfer of Mr. Jackson and Mr. Canning.

A. Well, as well as I remember, I called Bowen and told Mr. Bartels to fix up between them a couple of men that were satisfactory to both releasing and receiving foremen, and suggested those names, and called their attention to the fact that it would help us out on the housing problem.

Q. Now, when was this?

A. That was in about the early part of April.

Q. Before or after your conference with Mr. Shannon?

A. It was after the conference.

Q. You called Bowen, you say?

A. Yes.

Q. Did you talk to Mr. Bowen, personally?

A. Yes, sir.

Q. Well, what was Mr. Bartels doing, was he on the telephone?

A. No. No, I just, I told him right there at the Big Muddy office, that I would be leaving, and he and Bert would finish the arrangements.

Q. What did you tell Mr. Bowen?

A. I told Mr. Bowen who we had, and he—

Q. Whom did you tell him you had?

A. Told him we had Whitlock and Jackson, that was the original men.

Q. And what did Mr. Bowen say?

A. Well, he said, from what he knew about Whitlock, he didn't think he would fit into his organization.

Q. And then do you recall what was said?

A. No, I don't think I do.

[fol. 1294] Q. Was it then that you left the matter to Mr. Bartels?

A. I think it was. I think that is the way it came about.

Q. Now, I understand from your testimony that you made

no reference to Mr. Moore or Mr. Jones when you were talking to Mr. Bowen?

A. Yes.

Q. Is it true that you did make no reference to them?

A. Yes, sir, I didn't.

Q. Can you tell me why it is true that you did make no reference?

A. Yes, sir.

Q. Why?

A. Well, I just, I didn't want them in the district.

Q. Can you arrange for the transfer of Jackson and Canning, or was the proposal submitted to Mr. Shannon?

A. I don't think any proposal was submitted to Mr. Shannon.

Q. So far as you know it was merely taken care of entirely in your office?

A. Yes, sir.

Q. Under your jurisdiction?

A. Between the two district-, yes, sir.

Q. Now, then, I don't have as much information as I should like to have on your conversation with Mr. Rice. I understand you did—

A. Yes.

Q. (Continuing) Mention Mr. Moore and Mr. Jones to him?

A. Yes, I mentioned, I don't know whether I mentioned Jones, but I know I mentioned Mr. Moore.

Q. Now, this was before or after your meeting with Mr. Shannon?

A. Well, it was right along the early part of the month.

Q. Do you know whether it was before or after your meeting with Mr. Shannon?

A. No, I don't recall just the exact date.

Q. Now, is Mr. Rice in your district, or not in your district?

A. He was at that time, yes.

[fol. 1295] Q. He was at that time?

A. Yes, sir.

Q. What did you say to him, as nearly as you recall?

A. I asked him whether he would like to take on Dinty Moore in his organization, if we could place him. He said no.

Q. Did you give him any reason for your request?

A. No, I don't believe anything further than that.



Q. Did he give you any reason for his refusal?

A. No, he just laughed and said there was nothing doing, he wouldn't have him.

Q. Now, as to Mr. Jones, did you ask Mr. Rice whether or not he would take him?

A. I don't believe I did, because I had, when Rice was gang pusher in Big Muddy I tried to put Jones in his gang, and he wouldn't have him.

Q. Now, I understood Mr. Shannon to testify that sending Jones and Moore to New Mexico was a very good opportunity for Jones and Moore. In your opinion is that right?

A. Yes, sir.

Q. Did you oppose giving Mr. Jones such an opportunity?

A. Did I oppose?

Q. Yes.

A. His transfer to Hobbs?

Q. Yes.

A. No.

Q. Although from your testimony it would seem that in your opinion he was a very incompetent and unsatisfactory workman.

A. In the present surroundings, yes, sir.

Q. What reason did you have for wanting to get Mr. Jones and Mr. Moore out of your district?

A. Well, just because they were just gradually gang down hill. I knew what kind of workers they were before, when I was production foreman there.

Q. Did you have any other reason?

A. No.

Q. Do you know of other occasions where one district got rid of incompetent, unsatisfactory men by working them into another district?

[fol. 1296] A. Yes, sir, in my time I have had that happen to me.

Q. Do you recall when that was?

A. Well, when Mr. Jones was transferred to me from Walden, that was one time in Mr. Jones' case.

Q. Who arranged for that transfer?

A. Well, I think it was Mr. Flanagan. He was the assistant division superintendent at that time. He had charge of—

Q. As you recall, did he ask you whether or not you had a place for Mr. Jones?

A. No. No, he just told me.

Q. He told you?

A. He just told me he was sending him up, and that is all there was to it.

Q. Did he tell you whether or not he was a satisfactory worker?

A. No, all he told me was that he had had an accident and he didn't think he was fit for rotary work any more.

Q. Tell me, please, the difference between a cable tool and a rotary.

A. Well, cable tool drilling is, uses a different kind of tools.

Q. Just what is the difference?

A. You use bits, jars, and stems, and rope socket and a wire line attached to a temper screw that is on a walking beam, which is part of a standard drilling rig.

Q. Now, do you drill oil wells with that?

A. Well, in some places, I understand they are still using that method, but on very rare occasions. It is nearly always used to clean out wells.

Q. Well, now, what is the other, the rotary?

A. And the rotary is a hydraulic system, using pipe and pumps, and mud in the fluid.

Q. With a standard rig you drive the bit, and in a rotary you rotate?

A. Yes, sir, you rotate.

Q. Now, on a cable tool drilling operation, is it up and down motion, it slides up and down?

A. No, it raises these jars and you get a stroke.

Q. It is driven by cable?

A. Yes, by the weight of the tools.

[fol. 1297] Q. Well, now, does the operation of these two methods require different training?

A. For drillers?

Q. Yes.

A. Yes, there is.

Q. Well, how about the—

A. And the tool dressers.

Q. Tool dressers?

A. Yes, it is different training.

Q. But I understand Mr. Moore had done both, is that right?

A. Well, he had helped on a rotary rig, yes, as helper.

Q. And also on the cable tools?

A. Yes, sir.

Q. I understood you to testify that on or about May 1, 1936, you were spending 75 or 80 percent of your time in Lance Creek?

A. Yes, sir, some where around there.

Q. For how long a period had you been doing that?

A. Well, for, during the warm weather that had been going on for about a year, and then in the winter time, as the rotaries shut down, why, I would have more time available in the rest of the district.

Q. Well, do you recall when in the spring of 1936 you started spending so much time at Lance Creek?

A. Well, that started in around about, say, some time in March.

Q. Now, then, I understand that the first of this year there was some change in the supervision of the gas plant?

A. Yes, sir.

Q. The foreman there was transferred, is that right?

A. Yes, sir, he was transferred.

Q. What is his name, please?

A. R. G. Kennelly.

Q. May that be spelled?

A. Fennelly.

Mr. Shaw: In order to avoid confusion, you are speaking of the gas plant at Salt Creek?

A. Yes.

[fol. 1298] Q. Now, will you tell us, please, a little bit about that change, how it happened that Mr. Kennelly was transferred to Lance Creek for most of his time?

A. Well, they were building a repressor plant down there to put the gas back into the sand, conserve the pressure, and with the building of this plant, plus the gasoline plant operations there, but principally the building of this plant, it would take about all of his time, take pretty close supervision practically all of his time.

Q. Well, now, he had been using all of his time, had he not, supervising the gas plant at Salt Creek?

A. No, the one at Lance Creek and Salt Creek.

Q. Both of them?

A. Yes.

Q. Now, about this time, was there any change in the operation of the Salt Creek gas plant, or did that go on as it had been done for a number of months?



A. Yes, the gas plant operation was just running like it always had.

Q. Could you tell me just a little more about this housing problem. What difference did it make what men you transferred, so far as the housing problem was concerned?

A. Well, these men we were speaking about lived in a row of old-fashioned oil field houses, which we were doing away with, and building some modern houses in another part of the camp.

Q. Well, what happened to Whitlock, where is he living?

A. He is in one of the new houses.

Q. So he was transferred?

A. Yes, he is in one of the new houses.

Q. So that, if Canning and Jackson had not been transferred into another field, they would have been transferred into another house in the same field, wouldn't they?

A. Yes.

Q. I don't see the significance of the housing problem you mention.

A. Well, there were seven houses, old-fashioned houses, and only four new ones for the men to live in.

Q. Well, now, if you had not taken three men out of the old houses, where would you have taken them from? I understand four men were to be transferred away, anyway.  
[fol. 1299] A. Yes.

Q. Did all the men at Big Muddy live in these seven old houses?

A. No, oh no, we had a few leased houses, and then we had four other modern houses in the original camp.

Q. Well, I understand that you had seven men living in seven old houses?

A. Yes, sir.

Q. And you thought that if you transferred three of them, the four who were left could go into the four new houses, is that right?

A. Yes, sir.

Q. Well, will you state, please, the names of the seven men in the old houses?

A. There was Shafer, Spurgeon, Stevens, Whitlock, Whitman, and Bormuth. Is that seven?

Q. Can you tell me, please, whether or not you and Mr. Bartels, or you yourself, at any time gave specific consideration to the health and accident record of Mr. Moore and Mr. Jones?

A. Yes, we check over them every so often.

Q. I mean with reference to the transfer?

A. Yes, I say we took that into consideration.

Q. Well, did you have available a record comparing the different men?

A. We had copies of the sickness reports and accident reports.

Q. Well, did you have any tabulation showing what the different men had been doing?

A. Oh no, no, nothing but the records.

Q. Did you check over these?

A. Yes, sir, we looked them over.

Q. When, if you recall?

A. Well, I wouldn't know just when, but we check from time to time.

Q. After the first of April?

A. Well, it was right about that time, I imagine.

Q. Were you with Mr. Bartels, or by yourself?

A. Well, I don't remember whether we checked them together or not, I couldn't say.

[fol. 1300] Q. It has been stated to the effect that Mr. Jones did not get the production in certain wells which he should have gotten. Did you have any production records for individual wells?

A. Only the time of year when we make a well to well test, individual well test.

Q. But that is not a running record, I understand?

A. No, the wells all go into the same battery, the production from the wells all goes into the same battery.

Q. So you don't have a continuing record to show the production of the different wells?

A. Not well to well, but just as to the lease we do.

Q. Do you have any way of comparing the production from Mr. Jones' wells when he operated them, and when they were operated by his successor?

A. Well, we might, and we might not. You see the wells that Mr. Jones operated, he had a tank battery here (indicating) and there is some wells on the same lease that are operated by Mr. Erwin on a battery down here (indicating), and we put all these wells down at Erwin's battery.

Q. Do you have any figures to compare the production from Mr. Jones' wells when he was relief pumper with the production by the regular pumper?

A. I think we could get those up, yes, sir, if they are still on file.

Q. I believe in 1929 there was some change in the corporation?

A. Yes, sir.

Q. So far as you are concerned, did that in any way affect the employment status of the men at Big Muddy?

A. Well, at that time we laid off a lot of men. We cut the force.

Q. In 1929?

A. Yes, sir, we cut the force, and under the new Company we all had to take physical examinations before the insurance was allowed.

Q. Do you know how many pumpers you laid off at that time?

A. No, I don't.

Q. Approximately? Did you lay off any pumpers?

[fol. 1301] A. I don't remember pumpers. I know we laid off, we laid down all the clean out tools.

Q. Did you lay off any roustabouts?

A. Well, I don't remember.

Q. In 1931 or 1932, did you lay off any pumpers or roustabouts?

A. I couldn't say without looking at the records. I don't remember.

Q. Well, as I understand the testimony as to Mr. Jones and Mr. Moore, their services had been unsatisfactory since '26 or '28, and this increase in hours in 1936 was the first opportunity to lay them off, is that right?

A. Well, no, if I, in the case of Moore, I suppose I could have laid him off at any time, but there was always the fact that when Mr. Flanagan left there he asked that we favor Dinty.

Q. When did he leave?

A. I think in '28, I believe '28 or——

Q. Well, now, as to Mr. Jones, might he have been laid off any time?

A. Could have been, yes.

Q. There has been testimony as to a fire at a well operated by Mr. Jones.

A. Yes, sir.

Q. I understand that the cause of that fire is not definitely known, is that right?

A. That is right, yes, sir.



Q. I understand there has been within a recent period a fire at another well?

A. Well, it——

Q. Mr. Bartels——

A. Not recently, I don't think. —

Q. Well, within recent months, within the last two years?

A. No. I'll tell you, my recollection of it was that it was about, it was the night of some prize fight, one of the national prize fights.

Q. Can you fix the date any where definitely? Was it three years ago?

A. I can't even think of the prize fight it was.

Q. At any rate there was a fire at another well?

[fol. 1302] A. Yes, sir, there was another fire.

Q. And was the cause of the other fire ever determined?

A. Well, I had, in my mind, it was, I figured it was a slipping belt.

Q. Did you know that to be a fact?

A. No, everything was on fire when we got there.

Q. So that, in both cases, the cause was undetermined?

A. This last fire, the night of the fire, it was all in the belt house, it was confined to the belt house, practically the only thing that was burned. It was pretty hard to tell, but it would seem it had come from a slipping belt, and after the belt burned in two, it had fallen into the pump house.

Q. Is a pumper responsible for having his belts in shape?

A. Yes.

Q. With reference to the date when you and Mr. Bartels started considering the men to be transferred, I understood you to testify this morning, you would have to see the date of the letter. Now, do you recall whether or not you received any communications from Mr. Shannon or others advising you that the hours of work would be increased at Big Muddy?

A. Well, I believe I got a letter on it.

Q. Do you know when?

A. No, I don't know the exact date, but I believe I could——

Q. Can you tell me approximately when?

A. It would be just around the first of the month, the first of April.

Q. Some time before Mr. Shannon's visit, or afterwards? I refer now to the conference when you and Mr. Bartels and Mr. Shannon discussed the men to be transferred.

A. Well, these letters that come out, give the rates of pay and the number of hours. I don't know just what date that came in.

Q. Well, if you can't fix it, we will have to do without it.

Trial Examiner Holden: No further questions.

Redirect examination.

By Mr. Akolt:

Q. The Examiner has asked you about how you could check on the comparative amount of oil that Jones was able to pump with what others were able to pump. Isn't it true that you had a daily record, and were familiar with [fol. 1303] the situation day by day as to the amount that was going into each battery of tanks?

A. Yes.

Trial Examiner Holden: Is that available?

Mr. Akolt: I don't know whether it is available or not.

Witness: I don't know either. You see it is so far back.

Q. And isn't it true that the foreman on the job could tell whether a particular well was being produced in the capacity it was supposed to be produced, just by watching what was going on?

A. Sure.

Q. Now, there was another question asked you by the Examiner, that is whether there could be any comparison made as to the amount of oil produced from the wells he was pumping since he left with that produced before he left. Am I correct in my understanding that there has been a declining curve in the production in Big Muddy wells for a number of wells?

A. It has been going on since Jones left, as well as before, that is correct.

Q. So could you have any proper basis of determining what quantity of oil could be produced, that is the capacity from the wells?

A. No, you couldn't compare now and then.

Q. The Examiner also asked you about rotary and cable drilling. Does the Continental do its own rotary drilling, or does it contract it out?

A. Contracts it.

Q. This clean out work that you speak of, is that in con-

nection with cleaning out wells that have already been drilled?

A. Yes, sir.

Q. And in that connection they still use cable tools?

A. Yes, sir.

Q. Is that your understanding of the character of work that Moore would have been doing if he had gone to Hobbs?

A. Yes, sir, clean out wells, tool dresser on clean out wells.

Q. And he wouldn't be working on new wells?

A. No.

Q. Your answer is what?

A. No.

[fol. 1304] Q. Now, this Jones fire, or the fire on Jones' well, that happened, did it not, right while Jones was on the job?

A. Yes.

Q. And the other fire you spoke of, you say happened some time at night, when no one was around the well?

A. Yes, sir, there was no one around.

Q. You were up against a proposition, were you not, about April 1st, May 1st, of reducing your force by four, were you?

A. Yes, sir.

Q. Could you find places in your division for more than two men?

A. No, sir, not at that time.

Q. Isn't it true, both in the Lance Creek and the Salt Creek fields, that at the time, or shortly before this, some problem in connection with the reduction in force existed?

A. Yes, sir.

Q. But you were able to find places for two men in your division, were you?

A. Yes, sir.

Q. So, if I understand it correctly, it was necessary then to either discharge two men, or keep two men on the payroll that were not necessary, or to transfer them out of your district, is that correct?

A. Yes, sir.

Q. So the real problem that was up to you then, was to find a place for two men?

A. Yes, sir.

Q. To save a discharge?

A. Yes, sir.

Q. Now, just one concluding question. Regardless of the



capabilities or non-capabilities of Jones and Moore, did you attempt to exercise your best business judgment in selecting them as two of the four men to be transferred?

A. I think I did.

Q. And regardless of their efficiency or non-efficiency, did their Union membership or activities have anything to do with your selection?

A. It did not.

Mr. Akolt: I think that is all.

Mr. Shaw: I have no further questions.

[fol. 1305] Examination.

By Trial Examiner Holden:

Q. I understand you have daily production sheets which reflect the production for each day?

A. Yes, sir.

Q. Did you at any time ever consider the sheet reflecting Mr. Jones' production within a month or two prior to his discharge?

A. No, I didn't.

Q. Did you at any time discuss with Mr. Bartels whether or not Mr. Jones was getting the production which he should?

A. Yes, I think I have in a general way, covering all the leases in the field.

Q. But I refer specifically to Mr. Jones.

A. Well, that would come in under that.

Q. Was any reference made to the fact, so far as you recall, that Mr. Jones' production was declining?

A. No, I wouldn't know about the decline, whether it was on his end of the lease or the other end of the lease.

Q. So that, your daily production sheet did not show you anything for Mr. Jones' operations by themselves, is that right?

A. No, they wouldn't.

Trial Examiner Holden: No further questions.

Mr. Akolt: Let me ask you one other question, now.

Redirect examination.

By Mr. Akolt:

Q. Independent of any record such as you speak of, if a man is not working on the job, the wells are not being produced, are they?

A. No, not if he isn't looking after them.

Q. Well, is that the gist of your testimony, that it was your observation——

A. Mr. Bartels' observation.

Q. That Mr. Jones was not attending to his wells?

A. That is it.

Q. If he was not attending to them, the best production could not be obtained therefrom, correct?

A. Correct.

[fol. 1306] Recross-examination.

By Mr. Shaw:

Q. When do you say Mr. Jones wasn't attending to his wells?

A. Well, I didn't pay practically any attention to him after I got to be superintendent.

Q. You never saw Jones when he wasn't attending to his wells, did you, when he was supposed to be working? ✓

A. Well, there were times when I was production foreman there that I jumped him about not getting around to his wells.

Q. You jumped other fellows, too, did you?

A. I did.

Q. That happens in the every day course of events, doesn't it?

A. It does.

Q. Well, how does that make Jones any different than any body else, then?

A. Well, Jones would always have an argument about his work.

Q. So the trouble with Jones was not that he wasn't a good workman, but that he argued, that was the trouble with Jones?

A. Well, I would say a little of both.

Q. Well, did the arguments have anything to do with him being a bad employee?

A. Well, it would in a general way, yes.

Q. That had something to do with his attitude toward his work, didn't it?

A. Yes, sir.

Q. And if a fellow works for you, and when you give him

an order he argues with you about it, you think he is a bad workman?

A. Yes.

Q. And Jones was the kind of guy who would talk back to you?

A. He would.

Q. He was the kind of a fellow who would tell you when he thought you were wrong?

A. Yes.

Q. He was the kind of a fellow who, when he had a spill in 1932 because of a frozen pipe line, told you that was your fault, and it was, wasn't it?

[fol. 1307-1393] A. Well, I don't remember whether he told me it was my fault or not.

Mr. Shaw: Excuse me, I will withdraw that question.

Q. Do you recall the time in 1932 when Jones told you that unless his pipe line was fixed, that it was going to freeze, and you wouldn't recover the oil, and it did freeze, and Jones was blamed for the loss of the oil? Do you recall that?

A. I seem to recall something about that.

Q: And that wasn't Jones' fault, was it?

A. Well, I don't remember the circumstances now. These cases come up where one pumper has one lease in mind, and a man looking after him has a dozen or two. You can't remember every little detail.

Q. But the big trouble, Mr. Thomas, with Jones, was, as I understand it, that he would argue with his superiors?

A. One of his faults, yes.

Q. And that was about the only fault which distinguished him from the other men?

A. No, there are other pumpers there that will argue with you today.

Q. Well, do they argue as well, or as loudly as Jones did?

A. I don't know. There is one that will argue as well.

Mr. Shaw: That is all.

Mr. Akolt: I think that is all.

Trial Examiner Holden: The witness is excused.

(Witness excused.)



[fol. 1394] RESPONDENT'S MOTIONS TO DISMISS, ETC.

Mr. Akolt: In case XXII-R-5, the respondent moves for [fol. 1395] the dismissal of the petition for certification, on the ground: (1) That that petition is made by the Oil Workers' International Union, and the evidence in the case fails to establish that the Oil Workers' International Union has any right to so petition for certification or that the Board has any power to certify upon the petition of the Oil Workers' International Union; (2) the petition is based upon a unit alleged to be appropriate for bargaining purposes, which the evidence in the proceedings shows is not a proper unit for bargaining purposes and therefore, no such certification would be proper; (3) the evidence fails to show that the Oil Workers' International Union is the duly designated representative for collective bargaining purposes of a majority of the employees in either the field or the plant; or the field and plant combined; in the Salt Creek operations of the respondent; (4) that the evidence fails to show that the Oil Workers' International Union is the duly designated representative for collective bargaining purposes of a majority of the employees of Continental Oil Company in its production department in the Salt Creek, Wyoming field; (5) it is suggested that the evidence in the case shows such confusion as to the delegated or designated choice of the employees among the Salt Creek, Wyoming employees of the respondent as to render it improper to make any certificate upon the basis of the record in the case, and upon the ground that the evidence indicates or justifies anything that would be, first, the establishment of an appropriate unit for collective bargaining purposes, and then the establishment of designated and authorized representatives of a majority of the employees in such appropriate unit through an election to be held.

In the same case, XXII-R-5, the respondent renews each and every objection which it has made in the course of conduct of this hearing and which has been overruled by the examiner. The respondent further moves in XXII-R-5, to strike from the record all and each item of evidence which has been permitted to be introduced into the record over the objection of the respondent.

In XXII-R-5, respondent further moves for the dismissal of the petition for certification, upon the ground that it appears from the evidence in this case, that the National

Labor Relations Board is without jurisdiction of the purported subject matter of this hearing, and is without jurisdiction to receive, consider, or adjudicate the petition for certification.

[fol. 1396] In Case XXII-C-4, respondent renews each and every objection which it has made during the course of this hearing and which objection has been overruled by the Examiner. The respondent further moves to strike from the record, all and each item of evidence which the Examiner has permitted to be introduced into the hearing over the objection of the respondent.

The respondent further moves to dismiss the amended complaint, as amended, and separately moves to dismiss each separate paragraph and charge, upon the ground that the evidence in this case fails to disclose that the National Labor Relations Board has jurisdiction to consider or determine any or all of the charges set forth in the amended complaint, as amended, and the evidence affirmatively shows as to each particular charge, that the National Labor Relations Board does not have such jurisdiction; and separately, as to each particular charge and paragraph as set forth in the amended complaint, as amended, the respondent moves its dismissal upon the grounds that the evidence in the case utterly fails to establish such charge.

The respondent further moves for the dismissal of the entire amended complaint, as amended, and separately moves for the dismissal of each separate charge thereof, upon the grounds that the evidence discloses that complainant herein, the Oil Workers' International Union, or that Union as being the one who filed the charges upon which the amended complaint was based, was without right in filing such charges, and has no sufficient connection with either the respondent or the employees of respondent, to justify the filing of such charges or the consideration or adjudication thereof by the National Labor Relations Board.

I desire, if possible, to make the objections and all of them, above stated, run to and be directed to each separate paragraph and charge in the amended complaint, as amended, set forth, without the necessity of repeating each objection as above stated to each particular charge and paragraph, and I ask, if it can be stipulated and understood



that my objections or motions which I have dictated and enumerated above, may be considered as having been made separately to each particular charge and paragraph of the amended complaint, as amended, as well as to the whole thereof.

[fols. 1397-1602] Mr. Shaw: I shall stipulate that counsel's objections to the complaint as amended, that is, objections on the ground of (1) of lack of jurisdiction of the Board and (2) of failure of proof, shall go to each and every paragraph of the complaint, without the necessity of stating separate objections to each paragraph.

Mr. Akolt: Might I ask this, Mr. Shaw: in enumerating (1) and (2) in your stipulation, did you intend that your stipulation would not cover some of the objections or points which I enumerated above?

Mr. Shaw: Well, I thought, Mr. Akolt, that you made two general objections.

Mr. Akolt: I did, of the type that I suggested as far as the XXII-C-4 case went.

Mr. Shaw: Were there any other objections made?

Mr. Akolt: Yes.

Mr. Shaw: I shall stipulate further that objections of counsel for the respondent have been made separately and shall apply separately to each paragraph of the complaint as amended, and likewise as to the motion.

Trial Examiner Holden: Does that conclude the motion?

Mr. Akolt: I think that is all.

Trial Examiner Holden: Does counsel for the Board have any statement to make on the motion?

Mr. Shaw: No, I have no statement to make on the motion.

Trial Examiner Holden: The motion in its entirety as to Case XXII-R-5 and Case XXII-C-4 is denied.

[fol. 1603] RESPONDENT'S EXHIBIT No. 3 (A)

Big Muddy Field Personnel—Month of April, 1936

Supervisory

Anderson, B. H., Jr. Petroleum Engr.  
Bartels, R. C., Production Foreman.



Fleming, R. M., Head Roustabout.

Jeffres, A. E., Head Roustabout.

Johnson, G. M., Clerk.

O'Neal, J. O., Head Roustabout.

Stevens, D. C., Pipe Line Gauger.

Thomas, J. C., Dist. Supt.

#### Others

Arnold, R. C., Truck Driver.

Bondurant, P. O., Pumper.

Bormuth, K. W., Roustabout.

[fols. 1604-1607] Burke, P. J., Pumper.

Canning, L. D., Pumper.

Cauffman, W. W., Truck Driver.

Collins, Albert, Roustabout.

De Clue, R. A., Pumper.

Erwin, C. N., Pumper.

Hajny, J. T., Roustabout.

Hansen, C. V., Pumper.

Jackson, L. L., Pumper.

Jones, Ernest, Pumper.

Jones, H. L., Roustabout.

Moore, F. D., Roustabout.

Morgan, T. J., Roustabout.

O'Neal, I. H., Roustabout.

Peterson, J. E., Pumper.

Peterson, R. P., Pumper.

Purcell, P. S., Roustabout.

Shafer, A. K., Pumper.

Simon, E. L., Roustabout.

Spurgin, J. E., Pumper.

Toften, Michael, Pumper.

Whitlock, J. W., Pumper.

Whitman, Oscar, Pumper.

[fol. 1608]

**RESPONDENT'S EXHIBIT No. 4****Group Life Insurance Plan**

**Health and Non-Occupational Accident Benefit Plan  
Permanent and Total Disability Benefit Plan**

**Conoco Emblem****For Employees of the Continental Oil Company****Effective January 1, 1934****(Revised January 1, 1935)****Group Life Insurance Plan****I. Free Group Life Insurance****A. Amount of Free Insurance**

The amount of free insurance to which each employee is entitled shall be determined by his period of continuous service from date of permanent full-time employment, in accordance with the following schedule:

Period of Continuous Service From Date of Employment	Amount of Insurance
1 year and less than 2 years.....	\$1,000
2 years and less than 3 years.....	1,250
3 years and less than 4 years.....	1,500
4 years and less than 5 years.....	1,750
5 years and less than 6 years.....	2,000
6 years and less than 7 years.....	2,250
7 years and over .....	2,500

**II. Additional Group Life Insurance****A. Amount of Additional Insurance**

[fol. 1609] The amount of additional insurance which an eligible employee can secure shall be determined by his annual wage or salary, as computed by the employer, as follows:

Annual Wage or Salary		Amount of Additional Insurance	Monthly Cost to Employee
Class A Less than	\$1,500.00	\$1,000	\$ .70
Class B \$1,500.00 to	\$2,999.99	2,000	1.40
Class C \$3,000.00 to	\$3,999.99	3,000	2.10
Class D \$4,000.00 to	\$4,999.99	5,000	3.50
Class E \$5,000.00 to	\$5,999.99	7,000	4.90
Class F \$6,000.00 and over		9,000	6.30

### C. Cost of Additional Insurance

The cost of the additional insurance to the employee will be 70c per month per \$1,000 of insurance.

## III. Some Benefits and Privileges Applying to Both the Free and the Additional Group Insurance

### C. Termination of Insurance

The insurance of an employee ends when his employment with the Continental Oil Company and/or its subsidiaries ends, or when employee is transferred to commission status. However, in a case where at the time of termination of employment the employee shall be wholly disabled and prevented by bodily injury or disease from engaging in any occupation or employment for wage or profit, it is the intention of the Company and/or its subsidiaries to continue the free insurance as long as the circumstances warrant and the employee should arrange with his employer to continue his additional insurance during such period by continuing his monthly contribution.

Additional Insurance may be terminated if an employee notifies the Continental Oil Company and/or its subsidiaries to make no further deduction from his pay. Any employee who gives such notice will be insured again only upon passing the Insurance Company's medical examination.

### D. Conversion of Insurance

In case of termination of employment for any reason whatsoever, or transfer to commission status, the insured



[fols. 1610-1623] employee shall be entitled to have issued to him by The Travelers Insurance Company, without medical examination, a policy of Life Insurance in any one of the forms customarily issued by that Company, except Term Insurance, in an amount equal to the amount of his life insurance under this plan at the time of such termination, provided an application is made to the Insurance Company within thirty-one days. The premium for such life insurance shall be the premium applicable to the class of risks to which he belongs, and to the form and the amount of the life insurance policy at his then attained age.

[fol. 1624] RESPONDENT'S EXHIBIT No. 14 (A)

This Form Must Be Filled Out in Ink or Typewritten.  
Signatures Must Be in Ink

Denver, Color-do, April 3, 1936.

Personal and Confidential

To: Mr. J. G. Dyer, Ponca City

Subject: General Operations

In connection with my several conversations with you and the possibility of placing the Big Muddy Field organization on the new time and rate schedules either May 1 or 15, I would like to know if jobs could be found in the Oklahoma or Texas Divisions for Ernest Jones and Frank D. Moore.

R. S. Shannon.

RESPONDENT'S EXHIBIT No. 14 (B)

Employment and Changes  
(See Reverse Side)

Instructions for Use of Form:

Fill out

Sec. 1 in all cases (complete last two lines, only in case of employment or change of address)

Sec. 2 when requesting employment or transfer requiring executive approval

Sec. 3 for employment, rate change, or transfer

Sec. 4 for termination

## Sec. 1

Name of Company Continental Oil Company  
 Department Prod. Div. Rky. Mtn.  
 Name of employee Moore Last Frank First D. Middle  
 Street— City Parkerton State Wyo. Phone—  
 Notify in Emergency— City— State— Phone—  
 Request for Employment— Transfer X Perm. X Temp.—

## Sec. 2

Occupation— Location— Rate— Date Needed—  
 Reason for request for employment (or transfer) Trans-  
 [fol. 1625] fer account reduction in force caused by New  
 Working Schedule to be placed in effect May 1st in Big  
 Muddy Field.

(Do not refer to correspondence, if more space is needed  
 use reverse side)

If replacement, whom replacing— Rate of predecessor—  
 Dept. Head— Executive Officer— Approved— Approved—  
 Approved— Approved—

Employment— Temp.— Perm.— Rate Change—  
 Temp.— Perm.— Transfer X Temp.— Perm. X Temp. to  
 Perm.—

## Sec. 3

Married X Single— Office— Field X Date of Birth— Sex M  
 Emp. No.—

Present Record (Use Only for Rate Change or Transfer).  
 Date Employed 2-1918. Date Last Pay Roll Change 3-1-35  
 Present Rate 112.50 Mo.

Employed as Roustabout 156 Hrs. Is Employee Bonded? No.  
 At Big Muddy Dept. Prod.

Dept. Head or Supt. R. C. Bartels, J. C. Thomas, C. W.  
 Whittaker

Executive Officer—

Reason Same reason as given under Section #2

To Be (Use Only for New Record) (See Reverse Side)

Date Effective— Pay Roll Rate—

Employed as— Will Bond Be Required?—

At— Dept.—

Dept. Head or Supt.—

Approved—

(Do not refer to correspondence. If more space is  
 needed use reverse side)

## Pay Roll History

Fill out for rate change only. (Not required in case of regular rate progression or job change). If additional space is needed use reverse side.  
[fol. 1626]

Dept.	Occupation	Rate	Date
			2-1918
Prod.	Midwest Ref. Co.....		1- 1-23
"	Driller .....		1- 1-23
"	" Big Muddy .....	9.00	7- 1-24
"	Clean-out Drl .....	250.	5-17-26
"	Rotary Hlpr .....	6.50	9- 3-26
"	" " .....	5.00 & 5.50	9-16-26
"	Bull Gang .....	4.00	9-29-27
"	Rotary Hlpr .....	4.00	10-14-27

Continue to reverse side

If employment or transfer State whether new position or replacement— Whom Replacing— Was predecessor transferred or terminated?— Rate of predecessor—  
Are the following forms attached? Answer "yes," "not required," or "will follow"

Application for Employment—

Bond Application—

Minor Release—

Letters of Reference—

Medical Examination—

Credit Report—

### Sec. 4

Termination Office— Field—

Occupation— Location— Date terminated— Rate— Paid to and including— Date employed— Reason (in detail)— Would you rehire?— Skill— Attendance— Will replacement be made?— Dept. Head or Supt.— Approved— Approved— Use if case of transfer to other pay rolls: Advance funds, if any \$— Bond—

Social Security Act Information (To be filled in only in case of employment where Application for Employment Form F 12-21-PA is not secured.)

Employee's "Federal Social Security Account Number"—

Employee's "Employer Registration Number" Federal— State—



[fol. 1627] (If this form covers employment of a person who is also an employer, both the employer and employee numbers must be shown.)

(If employee has not been previously assigned a Social Security Number, employee's supervisor must see that employee registers with Social Security Board and that employee's Social Security Number or Numbers, when assigned, are forwarded to the Personnel Division, Ponca City, Oklahoma.)

Facility Value and Charge to Employee (For Company Facilities and/or Services Furnished Employee)

	Monthly Value
R—Residence (Describe)	\$
Q—Room or Bunkhouse	\$
L—Light (Gas or Electricity)	\$
W—Water	\$
H—Heat (Kind)	\$
M—Meals (Number Daily)	\$
Total Value	\$
Amount Charged Employee	\$

### Pay Roll History—continued

Dept.	Occupation	Rate	Date
Prod.	Roustabout	4.50	12-19-27
"	Tool Dresser	6.50	12- 1-28
"	Whse Hlpr	4.50	1-16-29
"	" "	4.00	2- 1-29
"	Bull Gang	4.00	6-16-29
"	Roustabout	4.50	9-18-29
"	" & Pumper	4.50 & 5.00	1- 1-31
"	Tool Dresser	6.50	8- 9-32
"	Roustabout	4.50	8-12-32
"	Tool Dresser	6.50	8-19-32
"	Roustabout	4.50	8-26-32
"	Tool Dresser	6.50	8-29-32
"	Roustabout	4.50	9-15-32
"	Tool Dresser	6.50	10- 1-32
"	" " & Roust.	4.50 & 6.50	10-18-32
"	Roustabout	4.50	12- 9-32
"	Tool Dresser	6.50	12-15-32
"	" "	4.50	1-11-33

[fol. 1628]

Dept.	Occupation	Rate	Date
Prod.	Tool Dresser & Rst.	6.50 & 4.50	1-16-33
"	Roustabout	104.00	3- 1-33
"	Tool Dresser	4.50	7-31-33
"	Roustabout	104.00	8- 7-33
"	Tool Dresser	5.50	8- 8-33
"	" " 12 Hrs.		
"	" " 9 Hrs.		
	& Roustabout	4.50, 5.50, 104.00	8-21-33
"	Tool Dresser & Rst.	.66 & .70	9- 1-33
"	Rst & Toolie	.66 & .60	9-16-33
"	Tool Dresser	.70	10- 1-33
"	Roustabout	.56	10-27-33
"	Roustabout	87.00	1- 1-34
"	"	107.50	8-19-34
"	"	112.50	3- 1-35

## RESPONDENT'S EXHIBIT No. 14 (C)

Continental Oil Company

Ponca City, Oklahoma, April 10, 1936.

Personal and Confidential

To: Mr. R. S. Shannon

Subject: General Operations

I have discussed the possibility of transferring employees Ernest Jones and Frank D. Moore to other divisions in the Production Department, and find that we do not have open at this time any jobs which these men are qualified to fill. It may be that with additional development now contemplated there will be an opportunity to place these men in the future, at which time you will be advised.

The new schedules which we intend placing in effect in the Big Muddy Field May 1st were approved on the basis that in no field where they were placed in effect would they result in the termination of permanent employees satisfactorily performing their duties.

If these employees are not satisfactorily performing their duties, they should be laid off, regardless

[fol. 1629] **RESPONDENT'S EXHIBIT No. 14 (D)**

of the change in schedule. If such is not the case and they are merely surplus because of the new schedule, I suggest that you give consideration to their transfer to Kevin Sunburst, Walden, or Eastern Colorado. You have new development work planned in those areas for the second and third quarters of 1936 and it may be possible to use them at one of those points.

J. G. Dyer (Sgd.)

\_\_\_\_\_  
**RESPONDENT'S EXHIBIT No. 14 (E)**

Ponca City, Oklahoma, April 11, 1936.

To: Mr. H. B. Simcox, Fort Worth, Texas

Subject: Transfer—Permanent Employee from Rocky Mountain Division

We have two permanent employees in the Big Muddy area of the Rocky Mountain division for whom it will be necessary to find positions elsewhere, as they will no longer be needed in that area and jobs cannot be found for them at other points in the Rocky Mountain division. These employees are:

Mr. F. B. Moore, roustabout at the ultimate rate of \$112.50 a month.

Mr. Ernest Jones, pumper at the ultimate rate of \$117.50.

Both men have been with the company for considerable time, and it is our desire that positions be found for them elsewhere in our operations.

It is my thought that you will be needing additional men in the New Mexico area at an early date, and that these men could be transferred to that point. Mr. Ernest Jones will be available for immediate transfer, and I suggest that you make

**RESPONDENT'S EXHIBIT No. 14 (F)**

arrangements to request his transfer to the first new job that you have in the New Mexico District, and that Mr. Moore be considered for the next opening in that district or elsewhere in your division but preferably in the New Mexico district.

J. G. Dyer (Sgd.)

Cc Mr. R. S. Shannon



[fol. 1630] **RESPONDENT'S EXHIBIT No. 14 (G)**

**Continental Oil Company**

**Fort Worth, Texas, April 14, 1936.**

**To: Mr. R. S. Shannon, Denver, Colorado**

**Subject: Transfer—Permanent Employee from Rocky Mountain Division**

It is noted you received a copy of Mr. Dyer's letter to this office, under above subject, concerning F. B. Moore, Roustabout, and Ernest Jones, pumper, two permanent employees in the Big Muddy area of the Rocky Mountain Division, whom it is desired to transfer elsewhere to a point where our operations require additional employees.

We should like to be advised as to whether or not these men are married or single, and if married, the number of children they have and their ages.

If you can furnish us with a copy of your personnel records on these two men it would be of considerable assistance to us in giving them consideration, and arranging for their transfers to New Mexico area at such time as additional personnel is needed in that district.

**H. B. Simcox, J. H. Johnston.**

**Cc HLJ JDG**

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**RESPONDENT'S EXHIBIT No. 14 (H)**

**Denver, Colorado, April 18, 1936.**

**To: Mr. H. B. Simcox, Fort Worth**

**Subject: Transfer—Permanent Employees from Rocky Mountain Division**

As requested in your letter of April 14, I inclose to you herewith a copy of our personnel records covering F. B. Moore and Ernest Jones now working as Roustabout and Pumper, respectively, in the Big Muddy Field, Wyoming.

Both of these men are married, but it is my understanding have no family other than a wife.

**R. S. Shannon.**

**RSS-RP Inc Cc JGD**

## [fol. 1631]      RESPONDENT'S EXHIBIT No. 14 (I)

Moore, Frank D.—Date of Birth: 3-17-82. Employed Production Department, Parkerton, Wyoming, 7-1-24. Married. 2 Years High School. Tool Dresser and Driller 6 Years

7- 1-24	Driller	\$9.00	
4-17-26	Cleanout Driller	250.00	
9- 3-26	Rotary Helper	6.50	
9-16-26	" "	5.50	
9-29-27	Bull Gang	4.00	
10-14-27	Rotary Helper	5.00	
12-19-27	Roustabout	4.50	
12- 1-28	Tool Dresser	6.50	
1-16-29	Warehouse Helper	4.50	
2- 1-29	" "	4.00	
6-16-29	Bull Gang	4.00	
9-17-29	Roustabout	4.50	
1- 1-31	Roustabout and Pumper	5.00	
8- 9-32	Tool Dresser	6.50	
8-12-32	Roustabout	4.50	
8-29-32	Tool Dresser	6.50	
9-15-32	Roustabout	4.50	
10- 1-32	Tool Dresser	6.50	
10-16-32	Roustabout	4.50	
12-15-32	Tool Dresser	6.50	
1-11-33	" "	4.50	
1-16-33	Roustabout	4.50	
3- 1-33	"	104.00	
7-31-33	Tool Dresser	4.50	
8- 7-33	Roustabout	104.00	
8- 8-33	Tool Dresser 12 Hrs.	5.50	
8-21-33	Tool Dresser 9 Hrs.	4.50	
9- 1-33	Roustabout	104.00	
8-19-34	Roustabout 156 Hrs	107.50	\$12 Rent deduction.
3- 1-35	" " "	112.50	" " "

## RESPONDENT'S EXHIBIT No. 14 (J)

Jones, Ernest—Date of Birth: 9-27-00. Employed Production Department, Salt Creek, Wyoming, 5-29-26. Married. 3 Years High School. Rackman 1 Yr. 2 Mo. Rotary Floorman 1 Yr. 3 Mo.

## [fol. 1632] Employment and Transfer Record:

5-29-26	Rotary Floorman	\$5.50
4-16-27	" "	6.25
6-27-27	Fireman	6.25
8- 1-28	Machine Shop Helper	4.50
7- 8-29	Rod Gang	4.00
7-16-29	Roustabout	4.50
11-16-29	Pumper	5.00
2- 1-32	Pumper	4.75
3- 1-33	Pumper	142.50
9- 1-33	Pumper	103.00
8-19-34	Pumper—156 Hrs.	117.50 \$7.50 Rend Ded.

## RESPONDENT'S EXHIBIT No. 14 (K)

Continental Oil Company

Fort Worth, Texas, April 22, 1936.

To: Mr. R. S. Shannon, Denver, Colorado.

Subject: Transfer—Permanent Employees from Rocky Mountain Division

"We have an opening for a roustabout in the Hobbs-Monument area, New Mexico district, and desire to fill this opening by transferring from the Rocky Mountain Division Mr. Ernest Jones, who is at the present time classified as a pumper—working in the Big Muddy Field, Wyoming.

Will you please arrange for Mr. Jones to report to Mr. H. L. Johnston, our district superintendent in the New Mexico district at Hobbs, New Mexico, and will you kindly also see that proper E&C form covering this transfer is sent to Mr. H. L. Johnston, at Box CC, Hobbs, New Mexico.

Inasmuch as housing facilities are somewhat hard to find, it is our suggestion that Mr. Jones should not move his family until he arrives at Hobbs and has made necessary arrangements for housing facilities.



## RESPONDENT'S EXHIBIT No. 14 (L)

Will you please advise Mr. Johnston at Hobbs, direct, with a copy of your communication to this office, when he may anticipate Mr. Jones to report to him.

(Sgd.) H. B. Simcox. cc J. G. Dyer, Ponca City, Okla; H. L. Johnston, Hobbs, N. M.

## [fol. 1633] RESPONDENT'S EXHIBIT No. 14 (M)

Western Union

Serial

Denver Colorado April 27 1936

Continental Oil Co  
H B Simcox  
Fort Worth, Texas

Relet twenty second proposed transfer Ernest Jones  
please wire ultimate roustabout rate Hobbs

R. S. Shannon.

Chg. Production Dept.,  
Continental Oil Co  
RSS-RP 8:45 AM

## RESPONDENT'S EXHIBIT No. 14 (N)

Western Union

1936 Apr 27

Ft Worth Tex  
Contl Oil Co R S Shannon  
DVR

Retel ultimate roustabout rate Hobbs one hundred twenty  
dollars headroustabout rate one hundred fifty dollars

H. B. Simcox

## RESPONDENT'S EXHIBIT No. 14 (O)

Western Union

Ser HX Ft Worth Tex  
 Contl Oil Co  
 R S Shannon DVR

1936 Apr 28

Frank D Moore report to H L Johnston Hobbs New Mex-  
 ico assignment duties cleanout helper stop advise Johns-  
 ton this office when Moore will report

H. B. Simcox.

[fol. 1634] RESPONDENT'S EXHIBIT No. 14 (P)

Copy Postal Telegram

Serial

Denver Colorado April 29 1936

Continental Oil Co  
 J G Dyer  
 Ponca City Oklahoma

Re transfer Jones and Moore Big Muddy to Hobbs May  
 first please advise if traveling expenses and cost moving  
 household goods will be allowed these employees

R. S. Shannon.

Chg. Production Dept.,  
 Continental Oil Co  
 RSS-RP 8:45 AM

RESPONDENT'S EXHIBIT No. 14 (Q)

Telegram

Teletype

Fort Worth Texas April 27 1936

Continental Oil Company  
 J G Dyer  
 Ponca City Oklahoma

Retel transfer Ernest Jones to New Mexico district re-  
 quested our letter April twenty second to Shannon copy

your office stop if Frank D Moore capable doing cleanout work can use him for operation Cardwell Winch doing cleanout and other work wells New Mexico district stop if he can do this work satisfactory arrange his immediate transfer having him report to H L Johnston Hobbs stop advise

H. B. Simcox.

MLF:LK

Paid charge Conoco Prod Dept 9:15 AM

Mail Cc to: R. S. Shannon, Denver, Colo. and H. L. Johnston, Hobbs.

[fol. 1635] RESPONDENT'S EXHIBIT No. 14 (R)

Western Union

Apr 29 1936 PM 1 37

Ser-CB Ponca City Okla.  
Continental Oil Co  
R S Shannon DVR

Retel traveling expenses and cost moving household goods Jones and Moore Big Muddy to Hobbs will be allowed.

J. G. Dyer.

RESPONDENT'S EXHIBIT No. 14 (S)

Western Union

2 Extra Cont Oil Casper Wyo 1 1931A May 1 1936

R S Shannon  
Room 1001 Continental Oil Bldg DVR

Jones refuses transfer to Hobbs

J. Thomas, Parkerton, Wyo.



**RESPONDENT'S EXHIBIT No. 14 (T)****Copy of Western Union Telegram****Serial****Denver Colorado May 1 1936**

**R. S. Shannon  
Continental Oil Co  
Lance Creek, Wyoming (Via Lusk)**

**Thomas wires Jones refuses transfer to Hobbs**

**R. Plaster.**

**Chg. Production Dept.,  
Continental Oil Co  
RP 11:00 A.M.**

**[fol. 1636] RESPONDENT'S EXHIBIT No. 14 (U)**

**Copy of Western Union Telegram****Serial****Denver Colorado May 4 1936**

**H. B. Simecox  
Continental Oil Co  
Fort Worth, Texas**

**Moore and Jones Big Muddy have declined transfer  
Hobbs stop will advise later if any other transfers con-  
templated**

**R. S. Shannon.**

**Chg. Production Dept.,  
Continental Oil Co  
RSS-RP 8:45 A.M.**

**RESPONDENT'S EXHIBIT No. 14 (V)****Denver, Colorado, May 5, 1936.**

**Mr. Frank D. Moore,  
Big Muddy, Wyoming**

**DEAR SIR:**

**I learn with regret from Mr. Thomas that you feel, in view  
of the condition of your wife's health, you must decline the**

transfer which has been offered you to go to Hobbs, New Mexico, as Clean-out Helper, in which classification you would receive seventy cents per hour.

As you know, this transfer was offered you in line with our policy of endeavoring to take care of, through transfer, any of the older employes whose services are made surplus in the field in which they have been working, as a result of reduction in force or other necessary changes.

Because of the circumstances mentioned, we are willing to continue your employment as a Roustabout in the Big Muddy Field for the present. District Superintendent Thomas has been so notified and will make the necessary arrangements.

#### RESPONDENT'S EXHIBIT No. 14 (W)

In working out this arrangement, you appreciate that it will, of course, be necessary for us to arrange the transfer [fol. 1637] of some other employe in order that you may be continued on the payroll at Big Muddy.

Yours very truly, R. S. Shannon, Gen'l Supt., Rocky Mountain Division.

RSS-RP.

#### RESPONDENT'S EXHIBIT No. 14 (X)

Denver, Colorado, May 4, 1936.

Personal and Confidential.

To: Mr. J. C. Thomas, Parkerton.

Subject: Temporary Continuation Employment Frank D. Moore—Big Muddy.

In view of the circumstances which have apparently influenced Frank D. Moore in declining a transfer from Big Muddy to Hobbs, New Mexico, or Fort Collins, Colorado, as a result of the reduction in force at Big Muddy brought about by the new schedules made effective May 1, it has been decided that if Moore wishes to continue in his present position at Big Muddy for the time being, you may re-instate him on the payroll under the new rate and time schedule immediately.

The continuation of the employment of Moore as a Roustabout at Big Muddy will make it necessary for you to work

out the transfer of some other Roustabout to put the Big Muddy organization on the allowed man basis not later than May 16.

I return herewith E & C Form submitted to cover the termination of Moore's services and will ask that you

RESPONDENT'S EXHIBIT No. 14 (Y)

prepare a new form to continue his employment, providing he wishes to remain in our employment as Roustabout at Big Muddy for the time being. If he elects to go back to work in his previous status, I will ask that you give him the inclosed letter setting out our position in the matter. A copy of this letter is attached hereto.

R. S. Shannon, Gen'l Supt., Rocky Mountain Division.

RSS-TRP Inc.

[fol. 1638] RESPONDENT'S EXHIBIT No. 14 (Z)

Denver, Colorado, May 4, 1936.

Personal and Confidential.

To: Mr. J. C. Thomas, Parkerton.

Subject: Refusal of Transfer—Pumper Ernest Jones—Big Muddy—Hobbs.

I return herewith the E & C Form sent in in duplicate to cover the termination of employment of Ernest Jones as Pumper at Big Muddy effective April 30, in view of his decline to accept a transfer to Hobbs, New Mexico.

The E & C Form is improperly filled out, and I will ask that you have new form prepared setting out under "Reason": "Services no longer required due to reduction in force and employe declined transfer to Hobbs, New Mexico."

R. S. Shannon, Gen'l Supt., Rocky Mountain Division.

RSS-RP Inc.

RESPONDENT'S EXHIBIT No. 14 (AA)

Denver, Colorado, May 5, 1936.

Mr. Frank D. Moore, Big Muddy, Wyoming.

DEAR SIR:

I learn with regret from Mr. Thomas that you feel, in view of the condition of your wife's health, you must decline the



transfer which has been offered you to go to Hobbs, New Mexico, as Clean-out Helper, in which classification you would receive seventy cents per hour.

As you know, this transfer was offered you in line with our policy of endeavoring to take care of, through transfer, any of the older employes whose services are made surplus in the field in which they have been working, as a result of reduction in force or other necessary changes.

Because of the circumstances mentioned, we are willing to continue your employment as a Roustabout in the Big Muddy Field for the present. District Superintendent Thomas has been so notified and will make the necessary arrangements.

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[fol. 1639] RESPONDENT'S EXHIBIT No. 14 (BB)

In working out this arrangement, you appreciate that it will, of course, be necessary for us to arrange the transfer of some other employe in order that you may be continued on the payroll at Big Muddy.

Yours very truly, R. S. Shannon, Gen'l Supt., Rocky Mountain Division.

RSS-RP.

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RESPONDENT'S EXHIBIT No. 14 (CC)

Denver, Colorado, May 15, 1936.

Personal and Confidential.

To: Mr. J. G. Dyer, Ponca City.

Subject: Refusal of Transfers F. D. Moore and Ernest Jones—Big Muddy-Hobbs.

Supplementing my letter of May 5 inclosing copy of a letter addressed to Mr. Frank D. Moore, in which we offered to continue his employment as a Roustabout in the Big Muddy Field for the present, would say that Mr. Moore has declined to make any definite statement to Foreman Bartels, District Superintendent Thomas, or myself regarding accepting further employment, evading the issue by stating that he would decide at some later date. I am today informed by Foreman Bartels that Moore is removing his furniture from dwelling No. R-131 and apparently intends

to live in Glenrock. I do not believe he intends to take advantage of our offer to continue his employment.

I am informed that Ernest Jones is taking over the grocery and postoffice at Parkerton and is preparing to vacate dwelling No. R-276.

R. S. Shannon.

RSS-RP.

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RESPONDENT'S EXHIBIT No. 14 (DD)

Denver, Colorado, May 20, 1936.

Mr. Frank D. Moore, Parkerton, Wyoming.

DEAR SIR:

Referring further to my letter of May 5, in view of the fact [fol. 1640] that I am informed by District Superintendent Thomas and Foreman Bartels that you have failed to make definite reply to my letter or report for work, this is to notify you that unless you report personally to Foreman Bartels, ready to assume your duties as Roustabout in the Big Muddy Field, within forty-eight hours of the time that this letter is handed to you by Mr. Bartels, we withdraw our offer to continue your employment.

Yours very truly, R. S. Shannon, Gen'l Supt., Rocky Mountain Division.

RSS-RP.

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RESPONDENT'S EXHIBIT No. 14 (EE)

Denver, Colorado, May 20, 1936.

Personal and Confidential.

To: Mr. J. C. Thomas, Parkerton.

Subject: Termination Employment F. D. Moore—Big Muddy.

Referring further to my letter of May 4 with inclosed letter to Mr. Frank D. Moore, in order that we may complete our files on this subject and definitely close same if Moore does not wish to avail himself of the offer contained in my letter of May 5 to continue him in our employment, I will ask that you have Foreman Bartels personally deliver to

Mr. Moore the inclosed letter, copy of which is attached, advising him that our offer to continue his employment will be withdrawn unless he reports for work within forty-eight hours.

Please let me know promptly whether or not Moore accepts this last opportunity to return to work.

R. S. Shannon, Gen'l Supt., Rocky Mountain Division.

RSS-RP Incs.

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RESPONDENT'S EXHIBIT No. 14 (FF')

Denver, Colorado, May 22, 1936.

Personal and Confidential.

To: Mr. J. C. Thomas, Parkerton.

Subject: Termination allowance F. D. Moore and Ernest Jones—Big Muddy.

In connection with the termination as of April 30 of the [fol. 1641] two above employees due to reduction in force in the Big Muddy Field and their refusal to accept a transfer of employment to other fields, and upon the assumption that Mr. Moore has not accepted our final offer of May 20 to return to work at Big Muddy, we are arranging to pass E & C Forms terminating the employment of these two men.

Unless Moore returns to work as per the offer contained in my letter of May 20, instruct Foreman Bartels to include in his second half May payroll one week's termination allowance for each of these men. If Moore returns to work, this allowance, of course, will only be given to Jones.

R. S. Shannon, Gen'l Supt., Rocky Mountain Division.

RSS-RP.

Above referred to E & C Forms passed to H. J. Winsor 5/23/36.



## RESPONDENT'S EXHIBIT No. 14 (GG)

## Continental Oil Company

Parkerton, Wyoming, May 22, 1936.

Personal and Confidential.

To: Mr. R. S. Shannon, Denver.

Subject: Termination Employment F. D. Moore—Big Muddy.

As instructed by you May 20th, Foreman Bartels delivered the letter to F. D. Moore this morning. Moore read it, said he would not come back to work and handed the letter to Bartels. It is now in our possession.

(Sgd.) J. C. Thomas, Dist. Supt. Salt Creek District.

## RESPONDENT'S EXHIBIT No. 16 (A)

Jones, Ernest, Production Dept., Parkerton, Wyoming  
Pay Roll History

Emp. 10-30-24	Rotary Floorman	Salt [Lake]*	5.50
11-28-25	Laid off		
		Creek	
Emp. 5-29-26	Rotary Floorman	Salt [Lake]*	5.50
[fol.1642]			
		Creek	
4-16-27	Rotary Floorman	Salt [Lake]*	6.25
6-27-27	Fireman	Walden	6.25
8- 1-28	Mach. Shop Hlpr.	Big Muddy	4.50
7- 8-29	Rod Gang		4.00
7-16-29	Roustabout	Big Muddy	4.50
11-16-29	Pumper—Special	Big Muddy	5.00
2- 1-32	Pumper	Big Muddy	4.75
3- 1-33	Pumper	Big Muddy	142.50
9- 1-33	Pumper	Big Muddy	103.00
8-19-34	Pumper	Big Muddy	117.50
4-30-36	Termination allowance of one week approved by J. G. Dyer. Services no longer required due to reduction in force, employee declined transfer to Hobbs, New Mexico.		

[\* Matter enclosed in brackets, struck out in copy.]

## RESPONDENT'S EXHIBIT No. 16 (B)

Jones, Ernest, Production Dept., Parkerton, Wyoming

## Sickness—Accidents

Date	Lost Time	State Fund Payments	Salary Paid	Cause Disability
3- 8-25	44 days	\$108.35	\$209.00	Fractured elbow
10- 5-27	108 days	307.85	675.00	Injury
6- 8-28	51 days	133.00	318.75	Knee crippled
9-18-28	4 days		18.00	Injury
7-22-32	44 days	103.35 Comp. 90.50 Medical		Fracture of rt. arm
12-11-32	8 days		19.00	Influenza
1-29-33	3 days		7.13	Tooth extraction
5-28-33	23 days		90.25	Teeth extracted.
				Rundown condition
1-20-35	8 days		30.32	Bronchitis

## RESPONDENT'S EXHIBIT No. 17 (A)

Moore, Frank D., Production Dept., Big Muddy, Wyoming

## Pay Roll History

10-18-32	Roustabout & Tool Dresser	Big Muddy	4.50
			6.50
12- 9-32	Roustabout	Big Muddy	4.50
[fol.1643]			
12-15-32	Tool Dresser	Big Muddy	6.50
1-11-33	Tool Dresser 9 hrs.	Big Muddy	4.50
1-16-33	Tool Dresser 12 hrs. & Roustabout	Big Muddy	6.50
			4.50
3- 1-33	Roustabout	Big Muddy	104.00
7-31-33	Tool Dresser	Big Muddy	4.50
8- 7-33	Roustabout	Big Muddy	104.00
8- 8-33	Tool Dresser 12 hrs.	Big Muddy	5.50
8-21-33	Tool Dresser 12 hrs.	Big Muddy	5.50
	Tool Dresser 9 hrs.		4.50
	Roustabout		104.00
9- 1-33	Roustabout & Tool Dresser	Big Muddy	103.00
			.70
9-16-33	Tool Dresser	Big Muddy	.60
10- 1-33	Tool Dresser	Big Muddy	.70
10-27-33	Roustabout	Big Muddy	.56
1- 1-34	Roustabout	Big Muddy	87.00
8-19-34	Roustabout	Big Muddy	107.50
3- 1-35	Roustabout	Big Muddy	112.50
4-30-36	Termination allowance of one week approved by J. G. Dyer. Services no longer required due to reduction in force, employee declined transfer to Hobbs, New Mexico.		

## RESPONDENT'S EXHIBIT No. 17 (B)

Moore, Frank D., Production Dept., Big Muddy, Wyoming

## Pay Roll History

2-1918 to 1-1-23 Midwest Refg. Co.

1- 1-23	Driller Merrit Oil Corp.	Big Muddy	9.00
7- 1-24	Driller Cont. Oil Co.	Parkerton	250.00
5-17-26	Cleanout Driller	Parkerton	6.50
9- 3-26	Rotary Helper	Parkerton	5.00
9-16-26	Rotary Helper	Parkerton	4.00
9-29-27	Bull Gang	Parkerton	5.00
10-14-27	Rotary Helper	Parkerton	4.50
12-19-27	Roustabout	Parkerton	6.50
12- 1-28	Tool Dresser	Parkerton	4.50
1-16-29	Whse. Helper	Parkerton	4.00
2- 1-29	Helper Whse.	Parkerton	4.00
6-16-29	Bull Gang	Parkerton	4.50
7- 1-29	Merger		
9-17-29	Roustabout	Big Muddy.	4.50

[fol.1644]

1- 1-31	Roustabout & Pumper	Big Muddy	4.50
8- 9-32	Tool Dresser	Big Muddy	5.00
8-12-32	Roustabout	Big Muddy	6.50
8-19-32	Tool Dresser	Big Muddy	4.50
8-26-32	Roustabout	Big Muddy	6.50
8-29-32	Tool Dresser	Big Muddy	4.50
9-15-32	Roustabout	Big Muddy	6.50
10- 1-32	Tool Dresser	Big Muddy	4.50
		Big Muddy	6.50

## RESPONDENT'S EXHIBIT No. 17 (C)

Moore, Frank D., Production Dept., Big Muddy, Wyoming

## Sickness—Accidents

Date	Lost Time	State Fund Payments	Salary Paid	Cause Disability
3-13-26	2 days		\$18.00	Jaw bruised
1-1-28-28	27 days		135.00	Strained back
1- 1-29	15 days		97.50	Left arm broken
2- 3-30	28 days		63.00	Kidney & heart trouble
3-28-30	10 days		22.50	Bad cold
2- 8-32	1 day		2.25	Influenza
10- 8-32	1 day		3.25	Influenza
1- 2-33	3 days	19.50	Disallowed, no doctor	Bad cold
3-28-34	None			F. B. in rt. eye
11-30-35	None			Injured collar bone
4-29-36	None			Cut great toe lt. foot



## RESPONDENT'S EXHIBIT No. 18 (A)

## Transfers

## Production Department Rocky Mountain Division 1936

Name	Date	From:	To:
Anderson, Ben H.	1-16-36	Roust. Cat Creek	Jr. Petro. Engr. Big Muddy, Wyo.
[fol.1645]		Reason: Replace terminated employee.	
Hillier, Claude R.	1-16-36	Clk. & Utilityman Lagunitas, N. M.	Field Clk. Lance Creek, Wyo.
		Reason: To replace transferred employee.	
Brown, Don M.	4- 1-36	Gas. Plt. Oper. Salt Creek	Head Roust. Lance Creek, Wyo.
		Reason: New position.	
Bormuth, Orn A.	4- 1-36	Roust. Salt Creek	Gas. Plt. Oper. Lance Creek, Wyo.
		Reason: Organization of force.	
Claycomb, J. A.	4- 1-36	Pumper Salt Creek, Wyo.	Gas. Plt. Oper. Lance Creek, Wyo.
		Reason: Organization of force.	
Massey, Bernal L.	4- 1-36	Gas. Plt. Oper. Salt Creek, Wyo.	Gas. Plt. Oper. Lance Creek, Wyo.
		Reason: Organization of force.	
Moses, H. C.	4- 1-36	Roust. (Prod.) Salt Creek, Wyo.	Roust. (Gas.) Lance Creek, Wyo.
		Reason: Organization of force.	
White, Mack	4- 1-36	Roust. Salt Creek, Wyo.	Gas. Plt. Oper. Lance Creek, Wyo.
		Reason: Organization of force.	
Brown, David R. C.	4- 1-36	Roust. Lance Creek, Wyo.	Scout & Leaseman Denver, Colo.
		Reason: New position.	
Moses, H. C.	4- 7-36	Roust. Lance Creek, Wyo.	Roust. Salt Creek, Wyo.
		Reason: To bring organization to par.	

## RESPONDENT'S EXHIBIT No. 18 (B)

Name	Date	From:	To:
Jackson, Louis L.	4-22-36	Pumper Big Muddy, Wyo. Reason: To replace transferred employee.	Roust. Salt Creek, Wyo.
[fol.1646] Fisher, Fred W.	5- 1-36	Pumper Salt Creek, Wyo. Reason: To operate electrical equipment for pumping wells.	Elec. Pumper Central Kansas Dist.
Canning, Leslie D.	5- 1-36	Pumper Big Muddy, Wyo. Reason: To replace transferred employee.	Roust. Salt Creek, Wyo.
Keller, Olea C.	7- 1-36	Clk. (Gaso.) Salt Creek, Wyo. Reason: New position.	Clk. (Gaso.) Hobbs, N. M.
Cauffman, W. W.	11- 1-36	Truck Driver Big Muddy, Wyo. Reason: New position.	Roust. Lance Creek, Wyo.
Peterson, J. E.	11- 1-36	Pumper Big Muddy, Wyo. Reason: New position.	Roust. Lance Creek, Wyo.

## RESPONDENT'S EXHIBIT No. 19

## Transfers

## Production Department Rocky Mountain Division 1937

Name	Date	From:	To:
Nabors, Hal	3- 1-37	Roust. Rattlesnake, Lee., N. M. Reason: To replace terminated employee.	Roust. Wellington, Colo.
O'Neal, Jesse O.	5- 1-37	Hd. Roust. (Prod.) Big Muddy, Wyo. Reason: To give closer supervision to all phases of work account increased operations. New position.	Hd. Roust. (P.L.) Lance Creek, Wyo.

[fols.1647-1648]

Name	Date	From:	To:
Nabors, Hal	7- 1-37	Roust. Wellington, Colo. Reason: To replace terminated employee.	Roust. Lance Creek, Wyo.
Warne, T. E.	7- 1-37	Pumper (Prod.) Wellington, Colo. Reason: To replace transferred employee.	Oper. (Gaso.) Lance Creek, Wyo.
Brown, John L.	8- 1-37	Pumper Wyoming District Reason: To replace transferred employee.	Resident Pumper Central Kansas Dist.
Peterson, Rasmus	9- 1-37	Pumper Big Muddy, Wyo. Reason: To replace transferred employee.	Pumper Salt Creek, Wyo.
Klahr, Forrest J.	10-16-37	Hd. Roust. Salt Creek, Wyo. Reason: To replace transferred employee.	Hd. Roust. Settles Pool, Texas

[fol. 1649] IN THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE TENTH CIRCUIT

ORDER OF SUBMISSION—January 25, 1940

This cause came on to be heard on the petition to review and set aside an order of the National Labor Relations Board and on the application of the Board to enforce its order, and was argued by counsel, John P. Akolt, Esquire, appearing for petitioner, Ernest A. Gross, Esquire, appearing for respondent.

On motion, petitioner was granted leave to file twenty printed copies of a reply brief in this cause instantler, which was accordingly done.

Thereupon this cause was submitted to the court.

IN UNITED STATES CIRCUIT COURT OF APPEALS

John P. Akolt (James J. Cosgrove, John R. Moran and Smith, Brock, Akolt & Campbell were with him on the brief) for Petitioner.



Ernest A. Gross (Charles Fahy, General Counsel, Robert B. Watts, Associate General Counsel, Laurence A. Knapp, Assistant General Counsel, Bertram Edises and Morris P. Glushien; Attorneys, National Labor Relations Board, were with him on the brief) for Respondent.

Before Bratton, Circuit Judge, and Vaught and Murrah,  
District Judges

OPINION—June 13, 1940

Bratton, Circuit Judge, delivered the opinion of the court.

This proceeding is before the court on petition to set aside and answer seeking enforcement of an order of the National Labor Relations Board. Petitioner, a corporation organized under the laws of Delaware, with its principal offices at Ponca City, Oklahoma, was engaged in the production of crude oil in the Salt Creek Oil Field, the [fol. 1650] production of crude oil in the Big Muddy Oil Field, and the operation of a crude oil refinery at Glenrock, all in the State of Wyoming. In September, 1937, Oil Workers International Union, hereinafter called the union, filed with the Board a petition requesting an investigation and certification of representatives for purposes of collective bargaining in the Salt Creek Field. Thereafter, upon charges and amended charges lodged by the union, the Board issued its amended complaint in which petitioner was charged with unfair labor practices in each oil field and at the refinery. Following conventional procedure, had in a consolidated hearing, the Board ordered petitioner to cease and desist from refusing to bargain collectively with the union as the exclusive representative of its employees in the Big Muddy Field; from refusing to bargain in like manner at the refinery; from dominating or interfering with the administration of Independent Association of Conoco Glenrock Refinery Employees, or with the formation or administration of any other labor organization of its employees; from contributing support to such Associations or any other organization of its employees; from discouraging membership in the union or any other labor organization by transferring, discharging, or refusing to re-employ any of its employees, or in any other manner discriminating in

respect to their employment; and from restraining, coercing, or otherwise interfering with its employees in their right of self-organization for collective bargaining. The order further required petitioner upon request to bargain collectively with the union as the exclusive representative of its employees at the Big Muddy Field, and at the Glenrock refinery, and in the event the union should be thereafter certified by the Board as the exclusive representative of the employees in the Salt Creek Field, then upon request similarly to bargain with it there; to withdraw recognition from and completely disestablish Independent Association of Conoco Glenrock Refinery Employees; to withdraw recognition from Continental Employees Bargaining Association; to offer Ernest Jones and F. D. Moore immediate and full reinstatement to the respective positions formerly held by them at the Big Muddy Field, or positions substantially equivalent thereto, and to make them whole by payment to each of a sum equal to that which he would normally have earned as wages during the period intermediate the termination of his employment and the offer of reinstatement, less his net earnings during such period; to procure for Moore [fol. 1651] the restoration of the insurance rights which were lost upon the termination of his employment; and to post appropriate notices that it would desist and comply with such provisions. In addition, the order directed that an election be held at the Salt Creek Field within twenty days for the purpose of determining whether the employees desired to be represented by the union. The election was held, and the Board certified that a majority had selected the union for that purpose.

The jurisdiction of the Board.—Petitioner produces, refines, transports, and markets petroleum and petroleum products on a large scale. It owns or controls oil and gas properties and refining plants in 13 states, and it owns or controls outlets for the distribution and marketing of its products in 31 states. In 1937 it produced about 1000 barrels of crude oil daily at the Salt Creek Field, of which about 650 barrels were for its own account and were sold under contract to the Stanolind Oil and Gas Company in the field. Approximately 3000 gallons of casinghead gasoline were produced daily at such field, all of which was shipped to the refinery of petitioner at Lewistown, Montana. About 1200 barrels of crude oil were produced daily in the Big Muddy Field, of which about 900 barrels were

for the account of petitioner, the remainder being "due to joint ownership of the leases from which the oil is produced, and royalties." All of such oil was shipped by pipe line to the refinery at Glenrock where it was refined. About 2500 barrels were refined daily at the refinery in Glenrock, some from the Big Muddy Field and some from operations of petitioner in the Lance Creek Field in Wyoming. Some 8000 gallons of casinghead gasoline were received daily at the refinery in Glenrock from the operations of petitioner in the Lance Creek Field, being transported by truck, pipe line and rail. About sixty per cent of the products produced at the Glenrock refinery were shipped by rail in tank cars owned or leased by petitioner to points outside the State of Wyoming, for sale to consumers living in other states. Approximately fifty per cent of the total production of fuel oil produced at the refinery was sold to two railroad companies engaged in interstate commerce, the amount thus sold being about 25,000 barrels. And the annual value of the finished products shipped from the refinery was approximately \$2,000,000.

[fol. 1652] The scope of the National Labor Relations Act, 49 Stat. 449, and the jurisdiction of the Board in its administration, are confined to interstate and foreign commerce, to the exclusion of operations which are essentially intrastate in character and which have no effect upon interstate commerce. But the statute leaves to be determined in each case whether the particular action affects interstate commerce in such a close and intimate fashion as to be subject to federal control. It is enough to bring an employer within the scope of the act and to confer jurisdiction on the Board if the consequences which arise or reasonably may arise from the acts and practices complained of necessarily result or are reasonably calculated to result in a stoppage or serious impediment to the free flow of interstate commerce. *National Labor Relations Board v. Fainblatt*, 306 U. S. 601. The nature and extent of the operations of petitioner clearly bring its activities into such close and substantial relation to interstate commerce as to subject it to the jurisdiction of the Board. *National Labor Relations Board v. Jones & Laughlin*, 301 U. S. 1; *National Labor Relations Board v. Fruehauf Trailer Co.*, 301 U. S. 49; *Santa Cruz Fruit Co. v. National Labor Relations Board*, 303 U. S. 453; *Consolidated Edison Co. v. National Labor Relations Board*, 305 U. S. 197; *National Labor Re-*



lations Board v. Fainblatt, *supra*; Southern Colorado Power Co. v. National Labor Relations Board, (10th) — F. (2d) —.

The identity of the union.—The parts of the order requiring petitioner to bargain collectively with the union at the Big Muddy Field and at the Glenrock refinery are challenged on the ground that the union never sought to bargain collectively with petitioner and therefore there could not have been refusal to bargain within the meaning of the act. The argument is that the efforts to bargain on which the order rests were made by International Association of Oil Field, Gas Well and Refinery Workers of America, not the union. Initially the union bore the name of International Association of Oil Field, Gas Well and Refinery Workers of America. It assumed its present name at a convention held in Kansas City in June, 1937. There was no change in officers or central offices; the change was only in name; and continuity of organization was preserved. The designations, correspondence, contracts submitted, and other efforts to bargain collectively on which the order rests, were made, had, submitted, and exerted [fol. 1653] before the change in name and were therefore in the original name of the union. But the charges were lodged with the Board after the change and were therefore in the new name, and in the order the Board referred to the union in like manner. While it may be said that the change in name included a shift in affiliation from the American Federation of Labor to the Committee for Industrial Organization, there was no such disruption or change of identity as to affect in any manner the validity of the parts of the order requiring petitioner to bargain collectively with the union.

The Salf Creek Field.—By supplemental petition it is alleged that this field practically in its entirety has been subjected to a unit plan of operation by agreement among the various operators therein, including petitioner; that the agreement was executed, and approved by the Secretary of the Interior, pursuant to the Act of February 25, 1920, 41 Stat. 437, as amended by the Act of August 21, 1935, 49 Stat. 674; that such agreement was dated January 10, was approved by the Secretary on August 26, and became effective on September 1, 1939; that under such plan Midwest Oil Company and Mountain Producers Corporation were

jointly designated as the operator of the lands covered by the agreement; that such companies entered into a contract with Stanolind Oil & Gas Company pursuant to which that company has undertaken to carry out the operations in the unit area; that all but one small tract of the lands theretofore operated by petitioner are covered by and have been subjected to the unit agreement; that as to the one small tract petitioner on September 1, 1939, entered into a separate contract with Stanolind Company whereby that company has taken over all the operations to be conducted thereon; that because of such developments, petitioner, as of the end of August, 1939, terminated the employment of all its employees in the field, except four who were transferred to other fields in which it operates; that since August 31, 1939, it has not had any employees in the field, is not conducting any business there, and will not conduct any business there in the future as both of the contracts mentioned are permanent in nature as to time.

The Board neither expressly admits nor denies the facts alleged in the supplement petition but in effect admits them. It is implicit in the brief of the Board that the facts set up are true. The contentions of the Board are that the order [fol. 1654] runs not only against petitioner, but also against its successors and assigns; that events which occur subsequent to the order are not material; that an order must be enforced on the basis of the record, not upon the record plus subsequently occurring facts; and that petitioner does not contend that the order has been obeyed.

Ordinarily the question of enforcement of an order of this kind must be determined on the record made before the Board, not factual developments which occur after the order was entered. And, of course, subsequent steps taken for the purpose of evading obedience to an order will not be accorded any consideration. But here the entire field has been subjected to a unit plan of operation. All of the companies operating there, including petitioner, joined in the plan, and it was approved by the Secretary of the Interior pursuant to an act of Congress. Under its terms two companies were designated as the joint operator, and they in turn made a contract with a third company pursuant to which it is now conducting the operations in the field. All of the lands operated by petitioner, except one small tract, were included in the plan, and pursuant to a separate contract the operating company is also operating that tract.

Petitioner has no employees in the field. There is no appropriate unit with whom it can bargain. There are no questions relating to wages, hours, or working conditions for consideration or determination. No agreement could possibly be reached or performed. It is trite to say that courts do not decide questions which have become moot. This court will not lend itself to the empty and futile gesture of commanding enforcement of an order of the Board directing petitioner to bargain collectively with a unit which is now nonexistent, in respect to questions which are now nonexistent, arising out of operations which are now nonexistent.

**The Big Muddy Field.**—The Board found that in August, 1933, and thereafter, petitioner refused to bargain collectively with the union as the exclusive bargaining agency at this field. As subsidiary findings, the Board further found that resulting from an election held in July, 1934, the Petroleum Labor Policy Board certified the union as the collective bargaining agency; that soon thereafter a committee representing the union presented a proposed agreement to J. C. Thomas, superintendent of production for the Wyoming District; that in response to such proposed agreement, petitioner on September 18, 1934, issued a statement of working conditions for the field which contained the statement among others that no understanding between petitioner and any association of employees should be considered as binding upon employees not members of such association; that at the time of the issuance of such statement, R. S. Shannon, general superintendent of production for the Rocky Mountain Division, announced that petitioner was ready to meet with any committee but would not recognize the union as the exclusive bargaining agency for its employees; that petitioner addressed letters to its employees in which it was stated that those who wished to be represented by the union might do so, but that others who might choose any other representative were entitled so to deal with the management; and that the management was prepared to deal with any such organization as the employees might choose to undertake, without management interference; that by letter written in March, 1935, the union took exception to the refusal of petitioner to recognize it as the representative of the employees and to enter into a contract with the union; that as the result of such communication a meeting was held between the com-



mittee and representatives of petitioner at which Shannon reiterated the position of petitioner as set forth in the statement of working conditions issued in September; that shortly after the passage of the National Labor Relations Board Act in July, 1935, a majority of the employees signed a petition designating the union as the collective bargaining agency; that on August 12, 1935, the date of the first attempt at collective bargaining after passage of the act, and thereafter, the union was the duly designated representative of a majority of the employees for such purpose; that on August 12, a letter was delivered to Bartels, production foreman at the field, informing petitioner that the union had been selected as the bargaining agency and requesting a conference for collective bargaining; that no answer having been received, a letter dated September 5 was delivered to Shannon requesting a conference; that pursuant to the second letter a meeting was held about September 26; that at such meeting the representatives of the union stated to Shannon that they represented the union, that the union had been selected as the bargaining agency; that they had in their possession a petition signed by a majority of the employees, and asked if he desired to see it; that Shannon replied that he considered the petition [fol. 1656] immaterial, and that he raised no question as to whether the union had been designated by a majority of the employees; that in response to a request that the union be recognized as the exclusive bargaining agency Shannon stated that petitioner maintained the same position as that set forth in the statement of policy of September 18, 1934, that it would not recognize any group as the exclusive bargaining agency but was willing to meet with any committee of individual employees, and that petitioner would not enter into any agreement with the union, not even to embody the provisions which petitioner had set forth in its own statement of September 18; that after a further exchange of letters had proved fruitless, a meeting was held on February 6, 1936, at which a conciliator for the Department of Labor was present; that at such conference a proposed contract presented by the union was discussed and the parties came to an agreement in respect to working conditions, which were embodied in notes taken by the conciliator; that Thomas stated that he could not bind petitioner to such conditions but would submit them together with his recommendation to Shannon for approval; that the union

did not receive any further communication from petitioner respecting such proposed agreement; that apparently as the result of the letter written by a representative of the Board, Shannon in May, 1936, approached a representative of the union for a meeting to discuss the tentative agreement which had been negotiated at the conference held February 6; that the representative of the union asked Shannon whether he was in a position to bind petitioner, to which Shannon replied that the discussion was to be purely informal; that the representative of the union then inquired whether Shannon would enter into joint recommendations to be referred to the central office of petitioner for adoption, to which Shannon replied in the negative; and that the representative of the union then stated that he saw no purpose in continuing the discussions unless there was some possibility of reaching an agreement, and that unless the union could meet with the management with a view of entering into a definite agreement, it would not ask for further meetings but would submit the matter to the Board.

Petitioner asserts that the petition circulated and signed in July, 1935, after passage of the act, was a statement that the employees who signed it had organized the union; that only ten of the twenty-eight employees who signed it were actually members of the union; that it was not a designation by non-members of the union as a representative for bargaining purposes; that it was not a designation of an exclusive bargaining agency within the contemplation of the act but only purported to speak for the members signing it and not for all members in the unit; that its substantial effect was a petition for an election to select an exclusive bargaining agency; and that it was never exhibited to petitioner prior to the hearing in this proceeding. The instrument recites at the outset that the signing employees had organized themselves into Local 242 of the union, in pursuance of the right of self-organization guaranteed in the act; that recitation is followed immediately by the statement that through such organization and the duly designated and authorized representatives and officers, the signers desire to make a collective bargain with their employer, as authorized by law, and that they do not wish to make individual bargains; then follows the statement that the signing employees therefore respectfully request a conference with representatives of the management at their

earliest convenience to begin negotiations to work out a collective bargain and to agree on terms of employment and orderly methods of settling differences in the relation between the management and the employees; and then the concluding statement is that in event petitioner questions the right of representatives of the union to speak for the undersigned employees, they petition the Board to conduct an election for the purpose of determining the choice of the employees of representatives for the purpose of collective bargaining. The instrument indicates clearly a purpose to designate the union as the representative of the employees for the purpose of collective bargaining. This is its rationale. It will not reasonably bear any other interpretation. And the fact that some of the persons signing it were not member- of the union makes no difference. Section 9(a) of the act provides that representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes shall be the exclusive representatives of all of the employees in such unit for such purposes. It does not require that all members of the majority making the selection shall be members of the agency selected. Such a limitation is not to be found either in the language or fair intendment of the statute. Neither does the fact that the designation was not exhibited to petitioner prior to the hearing have decisive bearing. Representatives of the [fol. 1558] union stated to Shannon in the course of the conference had in September, 1935, that they had such petition in their possession and asked whether he desired to see it, to which he replied that he regarded it as immaterial and that he raised no question as to the union having been designated by a majority of the employees as the exclusive bargaining agency. For all material purposes that was the equivalent of exhibiting the petition or delivering it to Shannon.

Stress is laid upon the point that even though the instrument signed in July, 1935, be treated as a designation of the union, still sixteen out of the twenty-one employees in the field subsequently formed themselves into an independent labor organization, as provided in the act, and that thereafter the union was no longer the exclusive bargaining agency. It is unnecessary to determine at this point whether the independent union was organized in the manner authorized in the act. It is enough to say that it was



not organized until June, 1937. It therefore could not affect the status of the union from August, 1935, to May, 1936. And if during that time petitioner wrongfully refused to bargain with the union, as the Board found, it could not be relieved of the consequences by the subsequent formation of the independent union. *National Licorice Co. v. National Labor Relations Board*, — U. S. —.

While the act contemplates the making of contracts with labor organizations, it does not require parties to agree. But it does require an employer to negotiate in good faith with the purpose of coming to an agreement if possible. *Consolidated Edison Co. v. National Labor Relations Board*, *supra*. Where an oral agreement is reached it is the duty of the parties to embody it in a written contract as a mutual guaranty of conduct. And refusal of an employer to unite in a contract embodying an oral agreement reached with its employees amounts to a failure to comply with the act. *Globe Cotton Mills v. National Labor Relations Board*, 103 F. (2d) 91; *Art Metals Construction Co. v. National Labor Relations Board*, 110 F. (2d) 148; *National Labor Relations Board v. Highland Park Manufacturing Co.*, 110 F. (2d) 632; *H. J. Heinze Co. v. National Labor Relations Board*, (6th) — F. (2d) —. Petitioner's reaffirmation after passage of the act of the policies stated in the letter of September 18, 1934, and its refusal to embody such policies in a written contract constituted a failure to comply with the act.

[fol. 1659] It is urged with emphasis that even assuming that in August, 1935, and soon thereafter, petitioner engaged in an unfair labor practice by refusing to recognize the union as the exclusive bargaining agency, still the evidence shows that at the time of the hearing and prior thereto membership in the union had shrunk to only four, and that it therefore was beyond the power of the Board to compel petitioner to conduct bargaining activities with it. It is a reasonable assumption that any diminution in membership of the union was due in large measure to the wrongful failure and refusal of petitioner to bargain with it as representative of the employees in the manner required by the act; and an employer cannot discredit a duly designated bargaining agency of its employees by refusing to bargain with it and then be allowed to take advantage of a loss in membership due to its wrongful act. Where reduction in membership has been occasioned

by such action on the part of the employer, and order requiring the employer to bargain as contemplated by the act is reasonably necessary and proper to overcome the effect of the interference with self-organization. *National Labor Relations Board v. Highland Park Manufacturing Co.*, *supra*.

Evidence was introduced concerning written and verbal statements made by petitioner prior to the passage of the act. Such statements could not within and of themselves constitute a refusal to bargain with the union within the meaning of section 8 (5) of the act. But they threw light upon the attitude of petitioner in respect to recognizing the union as a bargaining agency, and the Board was warranted in taking them into consideration in determining whether after passage of the act petitioner negotiated in good faith with the view of reaching an agreement if possible, whether it negotiated but with a closed mind against reaching any agreement however reasonable and fair, whether it conferred but with a fixed resolve throughout not to come to any accord. Especially is that true since in the course of negotiation and conference had after passage of the act, petitioner made specific reference to the letter of September 18, 1934, reiterated the position outlined in it, but announced that it would not enter into an agreement which merely embodied the provisions of such letter.

The act provides that the findings of the Board shall be conclusive on appeal if supported by substantial evidence. Section 10 (e) (f). As used in the statute, substantial [fol. 1660] evidence means more than a mere scintilla of evidence. It must do more than create vagueness, uncertainty or suspicion of the existence of the essential fact to be established. It must carry such conviction that a person of ordinary mind might reasonably accept it as adequate upon which to form a definite conclusion. *Consolidated Edison Co. v. National Labor Relations Board*, *supra*; *National Labor Relations Board v. Columbian Enameling & Stamping Co.*, 306 U. S. 292. But a court on review cannot substitute its judgment for that of the Board on disputed facts. A court is not free to overturn a finding of the Board which is supported by substantial evidence, even though the court might reach a different conclusion on the conflicting evidence. *National Labor Relations Board v. Waterman Steamship Corporation*, — U. S. —; *Swift & Co. v. National Labor Relations Board*, 106

F. (2d) 87; Southern Colorado Power Company v. National Labor Relations Board, *supra*.

There were sharp conflicts in the evidence, but the credibility of the witnesses, the weight to be given to their testimony, and the determination of the conflicts were matters for the Board, not this court. National Labor Relations Board v. Waterman Steamship Corporation, *supra*; Swift & Co. v. National Labor Relations Board, *supra*; Southern Colorado Power Company v. National Labor Relations Board, *supra*. The finding that at the times stated petitioner refused to bargain collectively with the union as the exclusive bargaining agency of its employees is supported by substantial evidence and therefore cannot be overturned on review.

The Glenrock Refinery.—The refinery is located only about two and one-half miles from the Big Muddy Field, and some of the employees at the refinery also belong to Local 242 of the union. The Board found that in August, 1935, and thereafter petitioner refused to bargain collectively with the union as the representative of its employees in an appropriate unit, with respect to rates of pay, wages, hours of employment, and other conditions of employment, and thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in section 7 of the act; and that it dominated and interfered with the formation and administration of Glenrock Association and thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed under such section. As subsidiary findings, the [fol. 1661] Board found that following an election held in July, 1934, the Petroleum Labor Policy Board certified the union as the collective bargaining agency of the employees at the refinery; that shortly after such certification a representative of the union called upon Carl R. Tillman, superintendent of the refinery, and expressed the desire of the union to meet with petitioner and negotiate a collective agreement; that in the course of the discussion the representative of the union objected to the action of petitioner in bargaining with Employees Council Plan, an organization sponsored and supported by petitioner, despite the certification of the union; that Tillman replied that petitioner preferred to meet directly with its employees and would continue to do so; that the proposal of the union for a contract covering working conditions was answered by



a letter dated September 22, 1934, similar in context and form to the letter of September 18, 1934, relating to the Big Muddy Field; that in a meeting held in December, 1934, Walter Miller, vice-president in charge of refining, stated that petitioner was willing to meet with any committee of employees or with any individual employee, but would not recognize any group as the exclusive bargaining agency; that in April, 1935, petitioner announced an increase in wages and stated that it had been obtained through the efforts of Employees Council Plan; that shortly after passage of the act, the union circulated among the employees a petition designating the union as collective bargaining agent, that a majority of the employees in the appropriate unit signed such petition, and that on August 12, 1935, the date of its first attempt to bargain collectively after passage of the act, and thereafter, the union was the duly designated representative of a majority of the employees and was the exclusive representative of all of the employees in such unit for the purposes of bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment; that the passage of the act marked no change in the attitude of petitioner; that a letter was delivered to petitioner stating that the union had been designated as a bargaining agency, and requesting a conference for the purpose of collective bargaining; that in answering such letter, Miller stated that he had answered right along that as a result of the conferences and meetings had in the past there was a full understanding in respect to the working conditions which petitioner [fol. 1662] had maintained, and methods of handling grievances with employees that he thought petitioner's attitude regarding its relations with its employees was thoroughly understood, that he was at a loss to understand what the union had in mind in stating that it wished to make a collective bargain, as according to his way of thinking petitioner had been collectively bargaining with its employees, one group through the council and the other through Local 242; that after further correspondence, a meeting was held at which Tillman was present; that the union presented a proposed agreement, and Tillman stated that he could not bargain on the matters but would refer the agreement to Miller; that in a lengthy letter to the union dated January 31, 1936, Miller rejected all of the proposals, stated that most of them had been covered in his letter of Sep-

tember 22, 1934, and that the working conditions therein set forth were still being maintained, reaffirmed the working conditions and grievance procedure described in the former letter, and further stated that he was ready to come to Glenrock for a meeting and discussion at any time within reason if it appeared that some good could be accomplished, but that in view of the number of times the points in disagreement had been discussed, the attitude of petitioner was undoubtedly well known to all of them; that a later request for an increase in wages was denied on March 14, 1936, in a letter of much the same tone; that such letter marked the end of negotiations; that throughout such negotiations, petitioner did not make any counter proposals; that at an election conducted by the Petroleum Labor Policy Board held in 1934, a minority of the employees registered their approval of an employee-representation plan; that with the assistance of Miller, a committee thereafter circularized the employees suggesting that such minority should proceed to organize such a plan and put it into effect, and with the assistance of petitioner Employees Council Plan was evolved; that the plan made no provision for membership meetings and left the conduct of its business to the employee representatives, all expenses were paid by petitioner, the chief clerk at the refinery was selected as secretary, he attended meetings and participated in discussions, and grievances were presented to petitioner through him; that after the validity of the act had been sustained, Miller wrote Tillman that the plan was no longer lawful and petitioner could no longer deal with it, he suggested that it be changed to conform to the law and ex-[§1. 1663] pressed the opinion that it could be made legal by the cessation of financial support from petitioner and the exclusion of any agent of petitioner from meetings of employee representatives, he further suggested that the employee representatives could either revise the plan to conform to the act, or in the alternative, create a new organization to supplant the existing council plan, and he concluded by directing Tillman to tell the men if they decided to work up something to fit the new conditions and wanted to consult with him, he would be glad to come to Glenrock for that purpose in the near future; that Tillman apprised the employee representatives of the contents of such letter; that with the assistance of the chief clerk the employee representatives prepared a new plan which in effect was

merely the old plan revised to meet certain of the objections raised by the act, but such plan failed of acceptance and was dropped; that about a month later a committee of employees prepared the constitution and bylaws of Independent Association of Conoco Glenrock Refinery Employees, and by petition circulated throughout the plant a majority of the employees approved them; that such constitution and bylaws were patterned in large part after the council plan; that with little change the association assumed the position of the council plan, the machinery for the presentation of grievances being identical except for the omission of the chief clerk as intermediary between the organization and petitioner; that communications from petitioner to the association were written on stationery headed "For Inter-department Correspondence Only"; that petitioner regarded the association as a continuation of the council plan; that soon after its organization, the association requested petitioner to recognize it as bargaining representative for members of the organization; that Miller promptly recognized it, and at the same time requested its officers to assure him that it had been designated by a majority of the employees; and that the difference in attitude of petitioner toward the union and toward the association created the clear inference that it favored the latter.

Some of the contentions urged here are identical with those advanced in connection with the Big Muddy Field. No useful purpose would be served by discussing them anew.

The council plan was organized in August, 1934, and it continued to function until about April, 1937. It is argued [fol. 1664] that from the time the council plan was organized it represented a majority of the employees, not the union. But membership in the plan did not represent the free and unhampered action of the employees, and for that reason did not constitute a revocation of the status of the union as bargaining agency acquired by the election and certificate of the Petroleum Labor Policy Board. Furthermore, the petition signed by a majority of the employees in July, 1935, designating the union as bargaining agency was subsequent in point of time to the formation of the council plan, and constituted a fresh mandate from that time forward.

It is the further intention that the independent union was organized in May or June, 1937; that a majority of the



employees joined in its organization; that it has existed ever since; and that at the time of the hearing and prior thereto it represented a majority of the employees with the result that the union did not. But the association was merely a continuation of the council plan; it was organized at the suggestion of the petitioner; it was not a free and unhampered action on the part of a majority of the employees; and it did not effect a revocation of the bargaining agency of the union. Not only so, but the participation of petitioner in revamping or recasting the organization constituted interference and domination, within the meaning of section 8 (2) and (1). *Swift & Company v. National Labor Relations Board*, supra.

A painstaking review of the record convinces us that the subsidiary findings are supported by substantial evidence, and that from such findings the Board was warranted in drawing the inference that in August, 1935, and thereafter, the union was the duly designated bargaining agency for the employees; that petitioner wrongfully refused to bargain collectively with the union as bargaining agency with respect to rates of pay, wages, hours, and other conditions of employment; and that it dominated and interfered with the formation and administration of the association, and in that manner interfered with, restrained, and coerced its employees in the exercise of rights guaranteed by the act. In other words, the primary findings of fact challenged are supported by substantial evidence and must stand.

**Discriminatory Transfers or Discharges of Employees.**—Petitioner determined that on May 1, 1936, it would [fol. 1665] change from a thirty-six hour to a forty-eight hour per week working schedule at the Big Muddy Field, and that the change would necessitate a reduction of four in the number of employees. The change in schedule would increase the monthly wages of employees, but would reduce the rate per hour. It was the policy of petitioner in effecting reductions in working force not to discharge employees but to take care of them by transfers to other fields if that could be done. F. D. Moore had been in the employ of petitioner since 1919, and was a roustabout. Ernest Jones had been employed since 1926, and was a relief pumper. Moore was second and Jones was fifth or sixth in seniority among some thirty employees. Both were mem-

bers of the union, were officers of the union, and were on the committee which was engaged in bargaining negotiations with petitioner. Without previous notice or discussion, they were advised on April 27 and 28 respectively that they had been transferred to Hobbs, New Mexico, a distance of about 800 miles from the Big Muddy Field, and that they were to report there on May 1. Members of the committee called on Thomas and inquired as to the reasons for the transfers, and were then informed for the first time that the hours of work were to be increased with the curtailment in force. The committee requested a postponement of the transfers and the effective date of the increase in hours until they could be heard respecting the matter. Thomas stated that he would communicate with Shannon and attempt to arrange a meeting, but no meeting was held and the effective date of the change in working schedule was not changed. Upon verifying Moore's statement that his wife was ill, petitioner offered to transfer him to Fort Collins, Colorado, but he declined to accept. Later he was advised that he could retain his job at the Big Muddy Field for the duration of his wife's illness. He declined that offer, was given a "Termination Check", and at the request of petitioner relinquished the house he had been occupying as a residence and left the field. Jones also refused to accept the transfer to Hobbs, was told that there was no work for him, and was given a like check.

The act does not interfere with the exercise of the normal right of an employer to discharge or transfer employees in the course of business. *National Labor Relations Board v. Jones & Laughlin*, supra; *Link-Belt Co. v. National Labor Relations Board*, (7th) — F.(2d) — [fol. 1666] But there is little room for doubt that a transfer of an employee, or a change in status of an employee from permanent to temporary, traceable to membership in a labor union or to activities on behalf of a bargaining agency, constitutes discrimination within the interdiction of section 8 (1) and (3).

★ The evidence bearing upon the transfer of these employees is long. It would not be helpful to delineate it. The evidence and the reasonable deductions to be drawn from it, presented to the Board the question of fact whether the selection of these particular employees for transfer was due to a necessary reduction in force at the Big Muddy

Field brought about by the change in weekly working schedule, or to their membership in and activities on behalf of the union as a bargaining agency. The Board found the issue against petitioner, the finding is sustained by substantial evidence and therefore cannot be disturbed. *National Labor Relations Board v. Waterman Steamship Corporation*, supra; *Swift & Co. v. National Labor Relations Board*, supra; *Southern Colorado Power Co. v. National Labor Relations Board*, supra.

That part of the order commanding reinstatement of the employees is attacked on the ground that the Board failed to find that at the time of the entry of the order either of them was an employee, within the meaning of the act; that the record conclusively establishes that they were not employees; and that for such reason they were not entitled to reinstatement with or without back pay. Section 10 (c) of the Act expressly authorizes the Board to order the reinstatement of employees, with or without back pay, and such power has been upheld. *National Labor Relations Board v. Jones & Laughlin*, supra; *Santa Cruz Fruit Packing Co. v. National Labor Relations Board*, supra. Moore obtained employment elsewhere, and Jones engaged in business for himself. But by force of the act an illegally discharged employee or one whose actual work has terminated as the result of wrongful discrimination has a legally protected tenure intermediate his discharge or discrimination and his reinstatement. The act creates a legal right in the employee, and it authorizes the Board as a remedial measure to order reinstatement with back pay. *National Labor Relations Board v. J. Gr̄enebaum Tanning Co.*, (7th) — F. (2d) —.

Complaint is also made that the Board ordered restoration of the insurance rights which Moore lost upon termination of his employment. It is provided in section 10 (c), supra, that the Board may order one engaging in an unfair labor practice to take such affirmative action as will effectuate the policies of the act. The provision is broad though not unlimited in scope and gives the Board warrant to order any relief which is reasonably adapted to redress wrong. *National Labor Relations Board v. Pennsylvania Greyhound Lines*, 303 U. S. 261; *National Labor Relations Board v. MacKay Radio & Telegraph Co.*, 304 U. S. 333. It cannot be said that the requirement to restore the insurance right which the employee lost upon



the termination of his employment was not reasonably adapted to the situation.

Petitioner was ordered to make the two employees whole for any loss of pay they may have suffered by reason of its acts by payment to each of them of a sum of money equal to that which he would normally have earned as wages during the period between the termination of his employment and the offer of reinstatement, less his net earnings during that period. Moore has been employed as guard at the penitentiary of Wyoming at a salary of seventy dollars per month and board. Jones purchased and has conducted a general store in Parkerton, Wyoming, and he has been postmaster at that place. No evidence was offered to establish the respective sums necessary to make the two employees whole, and the Board did not fix such sums. If an accounting is necessary it can be had under the direction of the Board, and the Board can then enter a subsequent order fixing the respective amounts.

Other Provisions in the Order.—Predicated in large part upon the postulate that its contentions already considered are correct, petitioner attacks certain provisions in the order as being arbitrary, unwarranted and capricious. Such provisions are authorized by the act and have been given judicial sanction. *National Labor Relations Board v. Bradford Dyeing Association*, — U. S. —. And in view of the facts, as found by the Board and supported by substantial evidence, it cannot be said that the provisions in question are either arbitrary, unwarranted or capricious, or not reasonably adapted to the situation.

That part of the order directing the posting of notices stating "that the petitioner will cease and desist as afore-[fols. 1668-1670] said" is drawn in question. In *Swift & Company v. National Labor Relations Board*, supra, this court modified an order of the Board by eliminating a similar provision and substituting other language for it. But since that case was decided, the Supreme Court has expressly approved and directed enforcement of an order containing the identical requirement in question. *National Labor Relations Board v. Falk Corporation*, 308 U. S. 453. Thus the authority of the Board to require the posting of notices containing such a provision is no longer open to doubt.

The order, insofar as it relates to the Salt Creek Field, will be neither set aside nor enforced. In all other respects it will be enforced.

## IN UNITED STATES CIRCUIT COURT OF APPEALS

JUDGMENT—June 13, 1940

This cause came on to be heard on the transcript of record from the National Labor Relations Board and was submitted to the court.

On consideration whereof, it is now here ordered and adjudged by the court that the said order of the National Labor Relations Board insofar as it relates to the Salt Creek Field will be neither set aside nor enforced; but in all other respects the said order of the National Labor Relations Board will be enforced.

[fol. 1671] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

PETITION OF CONTINENTAL OIL COMPANY FOR REHEARING

Continental Oil Company, petitioner in the above-entitled cause, respectfully petitions this Honorable Court for a rehearing on the following grounds:

As Applicable to Both Big Muddy Field and Glenrock Refinery.

1. The Court in its opinion properly condemns the "scintilla" rule of evidence and properly states that the evidence "must do more than create vagueness, uncertainty or suspicion of the existence of the essential fact to be established." [fol. 1672] We concede that the Court properly states the further rule that the Board's findings should be sustained if "supported by substantial evidence."

While these rules are concededly correctly stated as abstract propositions of law, we respectfully submit that they have not been applied to the facts of this case. The facts upon which the Court bases its affirmance of the Board's findings are, to a large extent, undisputed. The inferences of unfair labor practices which the Board has drawn from these largely undisputed facts are justified, if at all, only under an application of the condemned scintilla rule. The

Board based its findings upon part of the evidence only and gave no consideration to the evidence of Continental Oil Company. *Peninsular & Occidental S. S. Co., v. N. L. R. B.*, 98 Fed. (2d) 411, 415.

We respectfully ask that the Court review the entire case in further consideration of the applicable rules as to the character and sufficiency of evidence necessary to support the Board's findings as announced in the cases cited in this Court's opinion and the other similar cases cited in petitioner's brief heretofore filed. We will further comment upon this question in presenting the other grounds of this petition for rehearing.

2. This Court has affirmed the Board's findings that the International Association of Oil Field, Gas Well and Refinery Workers of America and the Oil Workers International Union are identical, with a change of name only being involved. In support of this affirmance the Court states that there was no change in officers or central offices; that there was a change in name only, and that continuity of organization was preserved. The Court recognizes, however, that there was more than a change in name and that there was also "a shift in affiliation from the American Federation of Labor to the Committee for Industrial Organization."

Whether these two unions are identical involves, we submit, a mixed question of fact and law. The Court in its opinion has not, we submit, given proper consideration to the most important point involved in this question, and that is the undisputed evidence in the record that the American Federation of Labor and the Committee for Industrial Organization involved adherence to diametrically opposed principles of labor organization. We submit that this [fol. 1673] Court has accepted as evidence and as all-important evidence the mere statement of counsel for the Labor Board that a change of name was all that was involved, and that the Court has not given proper consideration to the actual evidence in the record consisting, among other things, of the constitutions of the two unions which show that a member of one union by his pledge of allegiance to the principles of that union cannot possibly belong to the other union.

Neither has the Court given any consideration to the absolute absence of any evidence in this case to show that Local Union 242 as a local of the American Federation of Labor



Union—the International Association of Oil Field, Gas Well and Refinery Workers of America—ever changed or shifted its affiliation from the American Federation of Labor to the Committee for Industrial Organization.

There is no evidence that Local 242 or its members adopted or gave allegiance to the new constitution adopted at the Kansas City Convention when the name was changed. There is no evidence that anyone present at that convention had any authority to bind the members of Local 242 to any action there taken. Under the authorities cited in our brief heretofore filed any action which might have been taken at that convention could not be binding upon the members of Local 242, except as authorized, adopted or ratified, and there is no evidence of any such authority, adoption or ratification.

It is clear that the charges filed against the Continental were filed by the Oil Workers International Union as a CIO union. It is equally clear that those charges do not involve any labor relations between the Continental and that CIO union, but do involve labor relations between the Continental and an AF of L union. The charges, however, filed by the Oil Workers International Union and the complaint of the Labor Board founded upon those charges allege unfair labor practices as between the Continental and the CIO union. The evidence, however, fails to establish such charges by substantial, or any, evidence, but on the contrary affirmatively establishes such charges to be unfounded, for the particular reason, among others, that these two unions are not identical.

We respectfully request the Court to give this question further consideration.

[fol. 1674]

Big Muddy Field

1. The Court has affirmed the Board's findings that the Continental is guilty of violating the Act in failing to exclusively recognize Local 242 as the bargaining agency in the Big Muddy Field since August, 1935, and has decreed enforcement of the Board's order that the company shall deal exclusively with Local 242 as the bargaining agency in this field. With respect to Big Muddy Field we call attention to the following:

(a) The evidence is undisputed that the Continental bargained with no union other than Local 242. This being so, we submit as a matter of law that the Continental during

that period could not have been guilty of violating the act for failure to exclusively bargain with Local 242.

(b) There is no substantial evidence that the Continental refused to bargain with Local 242. The evidence in the case, including that presented by the Board and by the company, clearly establishes such bargaining inasmuch as there was bargaining and inasmuch as that bargaining was conducted exclusively with Local 242. We submit again as a proposition of law that the Continental was not guilty of any violation of the Act in its dealings with Local 242. The Court, we submit, has approached this question as being entirely a question of fact. Even with this approach there is no substantial evidence to support the Board's findings. As a question of fact, the finding should not be affirmed. Considered as a question of law, which we submit it should properly be, the order of the Board based upon these findings should not stand.

(c) The Court indicates in its opinion that the Continental was guilty of an unfair labor practice in refusing to enter into a written agreement with the Union embodying in that written agreement the policies stated in the September 18, 1934, letter.

The finding that there was any such refusal is not, we submit, supported by substantial evidence. It can only be justified upon the application of the condemned scintilla rule. It gives no recognition to the evidence introduced by the Continental. It is contrary to the undisputed evidence which was to the effect that no agreement had been reached between the parties which could possibly be the subject-matter of a written contract. It is based entirely upon Shipp's statement that he asked Shannon if the Continental would [fol. 1675] enter into a written contract embodying the terms of the September, 1934, letter. Such a statement was denied by Shannon. Assuming that such a statement was made, it was obviously a subterfuge only because, as pointed out by the Court in its opinion and as clearly appears from the record, the parties were negotiating for several months as to various labor problems and as to changes in the policies embodied in the September, 1934, letter, and it clearly appears that the Union and the company were not in accord. The February, 1936, meeting commented upon in the Court's opinion resulted in no agreement. Even if Shipp's testi-

mony be believed, which was denied by the Continental witnesses, the most it showed was that Thomas was in accord with certain recommendations discussed at that meeting, but Thomas stated he had no authority to bind the company. Those recommendations to which it is claimed Thomas gave his agreement were at variance with the policies expressed in the September, 1934, letter. These recommendations to which it is claimed the Union agreed at the February, 1936, meeting are the policies which the Union was insisting should be adopted by way of agreement. The Union was continuously objecting to various provisions in the September, 1934, letter, and notwithstanding this it is claimed that Shipp then asked Shannon, Superintendent of Continental, whether Continental would enter into a written agreement embodying the provisions of the September, 1934, letter, and that Shannon said no.

As to this situation we submit that Shipp's testimony was not entitled to credence. It is contrary to the whole picture as it then existed. It is perfectly obvious that if Shannon had answered yes to Shipp's alleged question, the Union would not have entered into any such contract. It was contending for entirely different principles in a number of respects. The alleged refusal of the company in May, 1936, to further negotiate for changes in the September, 1934, letter was the claimed justification for the Union's refusal to further bargain with the company.

There is no substantial evidence, we submit, to sustain the Board's finding that any such request was made to the Continental or refused by the Continental. So as a pure question of fact, this part of the Board's findings should not be permitted to stand.

[fol. 1676] As a question of law, however, even assuming that Shipp asked this question, we submit there could be no violation of the Act if Shannon gave the answer testified to by Shipp. There cannot be a refusal to enter into a contract unless there is an offer which can be refused. There was no offer upon the part of the Union to enter into any such contract. This is absolutely clear from the record. If it could possibly be believed that Shipp asked any such useless question of Shannon, when Shipp, as a representative of the Union, was continuously negotiating for various changes in the labor policies laid down in the September, 1934, letter, it must be clear that such a question was asked as a subterfuge only and in order to entrap Shannon in some



unintentional violation of the Act. The courts have announced time and time again that while there is a duty to bargain, there is no duty to agree. The Labor Board has quickly grasped this testimony of Shipp upon which to attempt to fasten upon the Continental a violation of the Act. We respectfully request that this Court reconsider this question, both from the point of fact and the point of law, so that it will not fall into this trap which Shipp testified he so carefully laid as the apparent foundation of a charge of unfair labor practice.

The Court cites certain Circuit Court decisions to the effect that a refusal of an employer to unite in a written contract embodying an oral agreement reached with its employees amounts to a failure to comply with the Act. This question, so far as we know, has not been passed upon by the United States Supreme Court. The cases cited, we submit, are not applicable to the facts, as clearly appears from the record in this case. There was no oral agreement which could be reduced to writing.

Furthermore, even under Shipp's testimony the most that can be said is that there were negotiations or discussions between Shipp and Shannon as to whether the company would enter into a written agreement with the Union. As stated by the Seventh Circuit in *Inland Steel Co. v. NLRB*, 109 Fed. (2d) 9, the question of whether an employer and employee should enter into a written agreement is as much the subject-matter of negotiation and bargaining as any other labor question. We quoted at considerable length from Judge Major's opinion in the *Inland Case* in our reply brief. The Seventh Circuit has adhered to this position in *Fort Wayne Corrugated Paper Co. v. NLRB*, 111 Fed. (2d) 869, (Advance Opinion). This Court in its opinion has not [fol. 1677] referred to either of these two cases. We ask consideration of the principles announced by the Seventh Circuit. As above stated, we submit that the cases cited by this Court in its opinion are not applicable to the facts in the present case because no oral agreement had been reached which could be reduced to writing, but if upon any theory it could be said that an oral agreement had been reached then we submit that Shipp's testimony at the most shows bargaining with reference to the further question as to whether that oral agreement should be reduced to writing. There was no obligation to reach an agreement as to that particular point, any more than on any other point, and

the failure to reach an agreement upon that point under the Jones and Laughlin decision of the United States Supreme Court, 301 U. S. 1, 81 L. Ed. 893, and other similar decisions, could not possibly constitute a violation of the Act.

(d) This Court holds in its opinion that the August, 1935, undisclosed petition directed to the Union constituted the Union at that time the exclusive bargaining agency in the Big Muddy Field. We again submit that this is not the proper interpretation of this petition.

Assuming, however, that the Union was so designated as the exclusive bargaining agency in August, 1935, we respectfully submit that that mere fact, if the entire picture in this field from that time to date is kept in mind, does not justify the order of the Board which will be enforced by this Court's decree if it is permitted to stand, compelling the company at this time to deal exclusively with that Union, all upon the ground that the company was guilty of an unfair labor practice in August of 1935 in failing to state that it was recognizing the Union exclusively, notwithstanding the fact that it was recognizing the Union exclusively and dealing with it exclusively.

The uncontradicted evidence, as pointed out above, shows that up to August, 1935, and from August, 1935, until May, 1936, the Continental bargained continuously and exclusively with Local 242 in the Big Muddy Field. There was no other union in that field. There is no charge of favoritism to any other labor organization which could have resulted in loss of membership by Local 242 because of such favoritism. This Court in its opinion states:

[fol. 1678] " \* \* \* It is a reasonable assumption that any diminution in membership of the union was due in large measure to the wrongful failure and refusal of petitioner to bargain with it as representative of the employees in the manner required by the act, and an employer cannot discredit a duly designated bargaining agency of its employees by refusing to bargain with it and then be allowed to take advantage of a loss in membership due to its wrongful act. \* \* \*

We submit that this assumption is not justified by the record. The company did not fail to bargain, and to bargain exclusively, with the Union. Furthermore, the company is not attempting to take any advantage of loss in

membership due to its wrongful act, or otherwise. The Act contemplates and expressly requires an employer to deal with the representative of a majority of its employees. The company desires to comply with this requirement of the Act. It cannot comply with either the letter or the spirit of the Act if it is required to deal with two employees as representative of twenty-one. This is the situation which exists as of the time of the hearing in this case. The Union had only four members in the Big Muddy Field, and two of them were not working; namely, Jones and Moore. An offer of reinstatement of Jones and Moore is ordered by this Court. Even if they should accept such offer, this would leave this Union with only four members in the Big Muddy Field. As we view it, the only possible justification for requiring an employer to deal with either two or four men as representative of twenty-one would be to punish the employer for some violation of the Act. As stated, however, by the United States Supreme Court, the purpose of the Act is remedial and not punitive. *Consolidated Edison Co. v. N. L. R. B.*, — U. S. —; 83 L. Ed. (Advance Opinion) 131, 144. *N. L. R. B. v. Fansteel Metallurgical Corp.*, — U. S. —; 83 L. Ed. (Advance Opinion) 469.

We have stated above that we are apprehensive that this Court has not viewed the true picture of this Big Muddy situation.

Local 242 was the only union in the field. The company bargained exclusively with that union. There was no labor trouble. There were labor problems, of course, which were the subject of peaceful negotiations. On some questions the company and the Union agreed; on others they did not. [fol. 1679] This continued both before and after the adoption of the National Labor Relations Act. The Union quit negotiating itself in May, 1936. The constitutionality of the Act was not upheld until April 1937. The Court will recognize the position of employers prior to the sustaining of the constitutionality of the Act. The Union made absolutely no attempt to contact the company in any way after the constitutionality of the Act was upheld. A complaint was issued by the Board against the Continental in February, 1938. (Record, p. 86, et seq.) This complaint contains no charges involving unfair labor practices in the Big Muddy Field. However, on February 12, 1938, (Record, p. 92), the Union filed a reamended charge, and then on February 23, 1938, a second reamended charge. (Record, p.



92, 93) It was not until the second reamended charge was made that any complaint was based upon unfair labor practices in the Big Muddy Field other than the alleged discharge of Jones and Moore. Even at this late date the charge is based upon the petition claimed to have been secured by the Union in July of 1935, constituting it as the exclusive bargaining agency.

We have therefore a situation which lay dormant from the time of the passage of the Act in July, 1935, until February, 1938, when a charge was made claiming that back in July, 1935, the company had been guilty of an unfair labor practice. We have a situation where the Union itself, starting with May, 1936, refused to attempt to bargain. The constitutionality of the Act was not upheld until April, 1937. The union made no move to ask for recognition, exclusive or otherwise, after the constitutionality of the Act was upheld, but notwithstanding this, in February, 1938, claimed that back in 1935 the company was guilty of a violation of the Act for which in 1938 it should be punished.

Furthermore, in June, 1937, an independent union was organized, having as its members sixteen out of twenty-one employees. There is no charge that this independent union was company-fostered or dominated. This Court in its opinion states that it is a reasonable assumption that Local 242 lost its membership because of the failure of the Continental to exclusively recognize it in July, 1935. We submit it is improper for this Court to indulge in such assumption when neither the Union in its charges filed with the Labor Board nor the Labor Board itself in its complaint against the Continental claims that the independent union was either company-fostered or dominated. There is not even a scintilla of evidence that the company did anything which caused Local 242 to lose its membership. There is positive and affirmative evidence, which is uncontradicted, that the organization of the independent union was the result of voluntary action upon the part of the employees themselves.

The power of the Board is limited to such orders for affirmative action as will tend to effectuate the purposes of the Act. It has no power to punish. We submit as a matter of law that the purposes of the Act cannot be effectuated by ordering the company to deal exclusively with either two or four employees as the bargaining representative of twenty-one employees, particularly when sixteen of those twenty-one employees have by their voluntary action

organized a union as their bargaining representative, against which independent union there is no charge of company domination of any character. The Board's order now to be enforced, if the Court adheres to its opinion, is based upon an alleged majority representation in July of 1935. In March of 1938 that representation was only two out of twenty-one of actual working employees and only four, if Moore and Jones should properly be counted. What the situation may be at the present date, namely, five years after the July, 1935, petition was signed, does not appear in the record, but what is obvious is that if the Board's order is enforced, it is based upon a condition found to exist five years ago which we know did not exist three years later, and presumptively does not exist at the present time.

The courts have recognized that a majority representation at one time may not continue indefinitely and that the bargaining power continues only so long as the majority representation exists, and that it is improper to require the employer to bargain with a union which has lost its majority representation. This particularly must be so where a new union has been formed against which no charge of company domination has been made. The courts have also recognized that where a claim of exclusive representation is based upon a petition which was signed a long time before the hearing involved and there is some question as to whether that majority representation still continues, the proper thing to do in order to further the purposes of the Act is to order an election. Such an election would bring [fol. 1681] the situation up to date so that the company would know that it is dealing with the proper bargaining agency. We have cited numerous cases to this effect on page 28 of our brief heretofore filed herein.

We respectfully ask this Court to review this entire situation from the viewpoint that to compel the company to deal with Local 242 as the exclusive bargaining agency in the Big Muddy Field cannot possibly further the purposes of the Act, but will amount to the infliction of punishment upon a great majority of the employees in this field by compelling them to have their bargaining rights carried on by two employees, or, at the most, four employees only; and this notwithstanding the fact that they have selected their own bargaining agency by their voluntary organization of an independent union free from any charge of company-fostering or domination. The furtherance of the purposes of the

Act through the creation and continuance of peaceable labor relations cannot reasonably be expected through the enforcement of such an order.

### Glenrock Refinery

1. The greater portion of this Court's opinion with reference to the Glenrock Refinery situation consists of a summary of the findings made by the Board. With but two short paragraphs commenting upon certain contentions made by the Continental, the Court concludes the Refinery portion of its opinion with the mere statement that the Board's findings, both final and subsidiary, are supported by substantial evidence.

As to some of the questions involved, we submit that the findings of the Board so approved by this Court are absolutely contrary to all the evidence in the case. As to the remainder, the Board's findings can be supported only by an application of the condemned scintilla rule.

2. The Court in its opinion states that the Council Plan did not represent the free and unhampered action of the employees. There is no evidence to support this. It is contrary to the evidence. This conclusion forms such an important part of the Board's findings and this Court's affirmance that we respectfully ask this Court to give this matter further consideration on this petition for rehearing. [fol. 1682] It should be kept in mind that in 1934 when the original election was held in the Big Muddy Field the company was operating under the Petroleum Code adopted pursuant to NIRA, subsequently held unconstitutional. There was no valid law prior to the enactment of the present Labor Act under which a union was entitled to represent all the employees simply because of majority designation. So it was perfectly legal for the company to recognize both Local 242 and the Employees Council Plan for their respective memberships. No violation of any law can be based upon the recognition of the two unions for their respective members. No criticism or charge of unfair labor relations can legitimately be based upon the recognition of each union for its own members prior to the adoption of the present Act. We submit that the Board in this unwarranted use of the so-called "background evidence" condemned by the Ninth Circuit in *NLRB v. Union Pacific Stages, Inc.*, 99 Fed. (2d) 153, has caused the whole issue to be so clouded as to do



absolute injustice to the situation which existed subsequent to the present Act.

Not only was the Council Plan a legitimate organization, but its creation and existence was the free and unhampered action of the employees themselves, and we respectfully submit that the statement of this Court in its opinion to the contrary is not only unsupported by, but is contrary to, the evidence in the case.

As the Court will recall, Local 242 filed a complaint with the Petroleum Labor Policy Board which existed under NIRA charging that the Employees Council Plan was a company-fostered and dominated union. A lengthy hearing was had before the Petroleum Labor Policy Board on this issue. The Petroleum Labor Policy Board decided that issue in favor of the Continental. Its opinion appears in the record as Defendant's Exhibit 1. (P. 1596, et seq.)

What the Board did and what this Court is doing is, without any evidence to the contrary, to overrule the Petroleum Labor Policy Board, which Board had the actual evidence before it upon which it based its findings.

3. The Court's blanket approval of the Board's findings and conclusions and orders based thereon covers the finding by the Board of unfair labor practice upon the part of Con-[fol. 1683] tinental on account of the fact that Vice President Miller in his letter of January 31, 1936, rejected all of the proposals made by the Union and adhered to the working principles set forth in his September, 1934, declaration of policy. It is clear that Vice President Miller considered all of the proposals made by the Union before rejecting them. In other words, there can be no charge that he did not bargain. It is true that he did not agree to the proposals, but this does not and cannot constitute a violation of the Act. Likewise, when proposals are rejected and other working principles announced or adhered to, there is no duty to make continuous counter-proposals.

NLRB v. Jones & Laughlin Steel Corp., 301 U. S. 1, 81 L. Ed. 893, 916.

NLRB v. Sands Mfg. Co., 83 L. Ed. (Advance Opinion), 488, 493.

Globe Cotton Mills v. NLRB, (C.C.A. 5), 103 Fed. (2d) 91, 94.

The company has been convicted of a violation of the Act for acts which under the decisions cannot, as a matter of law, constitute unfair labor practices.

4. The evidence is uncontradicted that the Employees Council Plan had a majority of the Refinery employees as members. There is no finding to the contrary. The July, 1935, petition of Local 242 was never submitted to the company. Mr. Shipp, the Union representative, so testified (p. 259) and stated as a reason for not presenting it (p. 262): "Our reason for not presenting a copy, there were a number of employees who signed this petition and made the request that it not be divulged to the company for fear that it would hurt their status as employees of the company, and it was their request that unless it was proved absolutely necessary, that petition would not be presented to the company."

We earnestly submit that such an undisclosed petition, purposely withheld from the company cannot, as a matter of law, constitute the creation of an exclusive bargaining agency, even assuming that the petition purported to create a bargaining agency, which we still insist it did not.

5. Again, even assuming that Local 242 as a result of the July, 1935, undisclosed petition was at that time the duly [fol. 1684] designated exclusive bargaining agency, the record shows without question that in June, 1937, an independent union was organized having a majority of the employees as its members. The Board found, and this Court has approved the finding, that this independent union was a company-fostered and dominated union. This finding we again urge is absolutely without foundation in the evidence. It not only is not sustained by any substantial evidence, but is contrary to all the evidence. The foundation of this finding is the statement of the Board quoted or summarized by this Court that Refinery Superintendent Tillman "apprised the employee representatives of the contents of such letter," referring to a letter which Vice President Miller wrote to Tillman under date of April 30, 1937. (Board's Exhibit 102, p. 1533, et seq.) We urge the Court to re-read this letter. If as a matter of fact Tillman did apprise the employee representatives of the contents of this letter, this would not constitute an unfair labor practice. It is a perfectly legitimate letter. If the contents of this letter had been shouted from the housetops we respectfully submit that no unfair labor practice could be based thereon.

However, the evidence is uncontradicted that neither the letter nor its contents were disclosed to any of the employees. No witness testified that the letter or its contents

were so disclosed. All witnesses testified to the contrary. This is not just all witnesses for the Continental, but includes the Board's witnesses. This testimony is summarized on pages 83, et seq., of petitioner's brief heretofore filed herein, a reconsideration of which we earnestly invite.

There is absolutely no subsidiary fact found by the Board in support of its ultimate finding of company domination of the independent union other than the alleged disclosure of the Miller letter. This subsidiary fact is not only not supported by, but is contrary to, all the evidence, and consequently we submit neither the subsidiary fact nor the ultimate fact should be permitted to stand.

6. This Court in its opinion states that the independent union was merely a continuation of the Council Plan; that it was organized at the suggestion of the petitioner; that it was not a free and unhampered action upon the part of a majority of the employees. These findings again, we submit, are not supported by, but are contrary to, the evidence. [fol. 1685] It is true that the independent union had as its members a majority of the employees and as such was the exclusive bargaining agency, and as such exclusive bargaining agency had the right and duty to, and did, carry on the bargaining for all employees, but this does not constitute in any illegal sense a continuation of the Employees Council Plan or any other union. There is no evidence of any character that the company or anyone acting in its behalf had anything to do with the formation of the present independent union. It was organized as the voluntary act of the employees. Some of these organizing employees were former members of the Council Plan; some were former members of Local 242. The only officer of the independent union who was an officer of the Employees Council Plan was Charles E. Martin. Allen Kimball, the President of the independent union (p. 657) was not a member of the Employees Council Plan. An employee named John Obrecht, who was never a member of the Employees Council Plan, but who was formerly a member of Local 242, was the chief organizer of the independent union and responsible for the language in its constitution and by-laws. (P. 602, 607.) No officer and no supervisory employee of the Continental had anything to do with the organization of the independent union. No support of any kind has been given by the Conti-



mental to that union. When that union was being organized, Local 242 did not claim to represent a majority of the employees at the Refinery. This is evidenced by the fact that Local 242 at the same time was circulating a petition for representation rights, which petition was purposely held up after the independent union started to organize. Even this petition, as testified to by the Board's own witness, Manley Miller, who participated in its circulation, was "for them to recognize or call an election, government election." (P. 526, 529, 530.)

These questions we have presented above for reconsideration do not involve findings of fact made upon conflicting evidence. They are findings made upon uncontradicted evidence which is contrary to the findings and evidence of such character that the findings cannot be supported thereon under the theory of reasonable inference. They are contrary not only to testimony of the witnesses of Continental but also to the testimony of the Board's own witnesses. Certainly such character of findings should not be permitted to stand.

[fol. 1686] 7. The situation at the Refinery, if the Board's order there is to be enforced, is practically identical with—if not worse than—that which existed at the Big Muddy Field. There are approximately eighty employees at the Refinery. Forty-seven of them designated the independent union as a bargaining agency. Four only belonged to Local 242 as of the time of the hearing before the Board. The company is now ordered to deal exclusively with these four as representative of the eighty employees. Local 242 at no time since the passage of the Wagner Act had more than slightly above a bare majority of the employees as its members. Based upon a situation which is claimed to have existed in July, 1935, with the Union at the most having a bare majority at that time, it is now proposed, some five years later, to compel the company to recognize as the exclusive bargaining agency a union with four members out of the eighty employees, and this notwithstanding the fact that in the year 1937 forty-seven of those employees designated another union as their bargaining agency. For reasons which we have heretofore advanced in connection with the Big Muddy situation we again earnestly suggest that the purposes of the Act, through the creation and continued existence of peaceable labor relations between em-

ployer and employee cannot be expected to be furthered through the enforcement of such an order. The very least which should be done, in view of all the circumstances involved, is to order an election which is the policy adopted by a number of the courts under somewhat similar situations.

NLRB v. National Licorice Co., (C. C. A. 2), 104 Fed. (2d) 655.

Hamilton-Brown Shoe Co. v. NLRB, (C. C. A. 8), 104 Fed. (2d) (Advance Opinion), 49, 56.

NLRB v. American Mfg. Co. (C. C. A. 2), 106 Fed. (2d) (Advance Opinion), 61, 68.

NLRB v. Bradford Dyeing Ass'n, (C. C. A. 1), 106 Fed. (2d) (Advance Opinion), 119, 125.

Cupples Co. v. NLRB, (C. C. A. 8), 106 Fed. (2d) (Advance Opinion), 100, 117.

Fansteel Metallurgical Corp., 83 L. Ed. (Advance Opinion), 469, 475.

[fol. 1687] We call attention to the language of the United States Supreme Court in the National Licorice Company case, — U. S. —, 84 L. Ed. 533, 539, (Advance Opinion):

“ . . . Such injury, if any, as the petitioner might have suffered from the Board's order requiring it to recognize and bargain with the Union, is avoided by the direction of the Court of Appeals that this part of the order be conditioned upon a determination by an election that the Union is still the choice of a majority of the employees. The Board has not petitioned for certiorari and does not complain of this direction.”

#### Jones and Moore

It is claimed that the Continental discharged Jones and Moore for union reasons. The Board so found, this Court has affirmed; and a reinstatement, with back pay, has been ordered.

1. This Court states in its opinion that the finding of the Board as to the discriminatory discharge is sustained by substantial evidence. What this evidence is which is found to be substantial is not stated by the Court. The necessity of a reduction in the working force is admitted. Some four men had to be selected for transfer if they were not to be discharged. As recognized by this Court, the

Wagner Act does not interfere with the exercise of the normal right of an employer to transfer or discharge employees in the course of business. The Continental, as employer in the present case, had the right to select who was to be discharged or transferred, free from any interference by the Board, unless the selection was based upon Union connections or activities. The burden of establishing Union discrimination as the cause for the selection of Moore and Jones for transfer was certainly upon the Board. As stated by the Court, the evidence relating to this matter appearing in the record is long. We have detailed it at great length in our brief heretofore filed. Since the rendition of this Court's opinion we have reviewed that evidence in an attempt to find the substantial evidence which the Court indicates in its opinion appears in the record as sufficient to sustain the Board's findings. The only possible thing in the record on which the finding can be based is the fact that Jones and Moore were members [fol. 1688] of the Union and were members of the Workmen's Committee of that Union and had seniority greater than some of the other employees. We submit that if these facts shall be considered as constituting substantial evidence of discrimination for union reasons, then it will be impossible for an employer ever to transfer or discharge a union employee, particularly if he happens to be an officer of the union. This certainly is not the law.

We ask the Court to reconsider this transfer question in view of the rules announced in *Consolidated Edison Co. v. NLRB*, 305 U. S. 197, 83 L. Ed. (Advance Opinion) 131, and *NLRB v. Columbian Enameling & Stamping Co.*, 306 U. S. 292, 83 L. Ed. (Advance Opinion), 480, to the effect that substantial evidence is more than a scintilla and must do more than create a suspicion of the existence of the fact to be established; and the rule announced by the Second Circuit in *Peninsular & Occidental S. S. Co. v. NLRB*, 98 Fed. (2d) 411, 415, that it is the duty of the Board to decide the case before it on all the evidence, and it is not at liberty to rely upon part of the evidence in support of its findings and put aside all other undisputed evidence. Also the statement of the Second Circuit in *NLRB v. Thompson Products, Inc.*, 97 Fed. (2d) 13, 15:

“ ‘Substantial evidence’ means more than a mere scintilla. It is of substantial and relevant consequence and excludes vague, uncertain, or irrelevant matter. It implies



a quality of proof which induces conviction and makes an impression on reason. It means that the one weighing the evidence takes into consideration all the facts presented to him and all reasonable inferences, deductions and conclusions to be drawn therefrom and, considering them in their entirety and relation to each other, arrives at a fixed conviction.

"The rule of substantial evidence is one of fundamental importance and is the dividing line between law and arbitrary power. Testimony is the raw material out of which we construct truth and, unless all of it is weighed in its totality, errors will result and great injustices be wrought."

2. We respectfully submit that this Court's opinion, in so far as it would enforce the Board's order in requiring reinstatement of Moore and Jones, is at variance with the opinion of other Circuit Courts under similar situations.

[fol. 1689] It is only "employees" who are in any event entitled to reinstatement. An employee is defined in subsection (3) of Section 2 of the Act as including "any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice *and who has not obtained any other regular and substantially equivalent employment.*"

The status of "employee" with reference to reinstatement must be determined as of the date of the entry of the Board's order. Unless that status exists at the time of the entry of the Board's order, the Board is without power to order reinstatement. Such is the holding of the following cases cited on pages 58 and 59 of our brief previously filed herein.

Mooresville Cotton Mills v. NLRB, (C. C. A. 4th), 94 Fed. (2d) 61, 66.

Standard Lime & Stone Co. v. NLRB, (C. C. A. 4th), 97 Fed. (2d) 531, 535.

NLRB v. Carlisle Lumber Co., (C. C. A. 9th), 99 Fed. (2d) 533, 537, 538.

NLRB v. Hearst (C. C. A. 9th), 102 Fed. (2d) 658, 664.

NLRB v. National Motor Bearing Co. (C. C. A. 9th), 105 Fed. (2d) 652, 662.

NLRB v. Botany Worsted Mills (C. C. A. 3rd), 106 Fed. (2d) 263, 269.

Clearly, under the evidence in this case Moore, being employed as he was at the State Penitentiary, and Jones,

being the proprietor of a general mercantile store, were not "employees," as defined in the Act, and the Board is without power to order their reinstatement. This Court makes no reference to the above cited cases and we are not clear whether it is the intention of the Court purposely to announce and follow a rule different from that announced and followed in these other circuits. We therefore respectfully ask the Court to reconsider this question.

3. With particular reference to Jones, while the Court has briefly mentioned it in its opinion in the recital of facts, we are not sure that the Court fully realizes that Jones, a few days after he refused his transfer, purchased [fol. 1690] a general merchandise store which he has since been operating as a proprietor, and in addition to this, he was appointed, and has since been acting as United States Postmaster at Parkerton, Wyoming, where his general store is located. We submit that as a matter of law Jones at no time after he purchased this store has had the status of an employee, and it is entirely beyond the power of the Board to order his reinstatement as an employee. If he had been illegally discharged and had not secured other "regular and substantially equivalent employment," he would still be an employee and within the class entitled to reinstatement if the Board should so order. Our point is that a proprietor of a business who himself has become an employer cannot be an employee.

It certainly cannot be the law that a person can voluntarily venture into a business as a proprietor, and then if it turns out that he makes no money, either on account of his poor business ability or some other condition, come back and receive reimbursement for the wage he would have earned had he retained his status as an employee either with the original employer or some other employer. The purpose of the Act must necessarily be to protect the employee or working class, so that if a member of such a class is illegally discharged and thereby deprived of his wages or income as an employee or working man, he will be reimbursed to the extent of his loss of wage. It was never contemplated that if a person for whose benefit the Wagner Act was primarily passed should voluntarily change from the employee or working class to the proprietor or employer class he would be entitled to such reimbursement.

On this question also, therefore, we ask the Court's further consideration.

### Other Orders of the Board

For the various reasons above stated we have asked for this rehearing. If the Court, however, should still adhere to its opinion that the findings of the Board should be sustained and the orders of the Board enforced, we ask the Court now to consider certain specific provisions of the Board's order.

1. The Board, in subdivision 2 (g) of its order (p. 78), with reference to the reimbursement of Jones and Moore, orders the company to pay each of them a sum of money [fol. 1691] equal to that which he would normally have earned as wages during the period from the date of the termination of his employment to the date of the offer of reinstatement, less his net earnings during that period, "deducting, however, from the amount otherwise due to each employee monies received by said employee during said period for work performed upon Federal, State, county, municipal, or other work relief projects and pay over the amounts so deducted to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work relief projects;"

We submit that the quoted portion of the above order is improper, unwarranted and beyond the power of the Board.

Presumptively, any federal, state, county, municipal or other similar agency for which such employee might have worked got value received for any payments made by it. There is no reason in law or equity why a former employer, irrespective of the reason for the discharge, should be required to pay the wage of an employee of the federal government or any other governmental agency for services rendered to such governmental agency. There is no justification in law or equity for making a collection agency out of the Continental to collect money for any governmental agency.

The quoted portion of the Board's order in subdivision 2 (g) is beyond the power of the Board and should not be enforced by order of this Court. The purpose of the Act is remedial and not punitive or disciplinary.

This is directly held by the Second Circuit in *NLRB v. Leviton Mfg. Co.*, 111 Fed. (2d) 619, 621 (Advance Opinion); and by the Ninth Circuit in *NLRB v. Tovrea Packing Co.*, 111 Fed. (2d) 626, (Advance Opinion).



The Seventh Circuit, in *NLRB v. Greenebaum Tanning Co.*, 110 Fed. (2d) 984, 988, (Advance Opinion), even invalidated a portion of the Board's order which required the employee to be reimbursed for dues checked off by the employer to a union.

2. With further reference to any order which may properly be entered requiring reimbursement payments of any kind to be made, we suggest that the Court's order should [fol. 1692] specifically require an accounting, inasmuch as a long period of time is involved and various accounting questions will necessarily be presented, including the portion of this period during which these employees worked for themselves and the portion during which they worked for others.

3. Subdivision 1 (c) of the Board's order (p. 76), among other things, if enforced, will enjoin the company from contributing support to said associations "or to any other organization of its employees." The quoted portion is obviously too broad. This would prevent contributions to the Employees Credit Union or to purely social organizations, and if any order at all is to be entered against Continental in this case the quoted portion should be amended to read, "or to any other labor organization of its employees."

4. Reference is made to subdivision 1 (d) of the Board's order (p. 77). This is so drawn as to prevent any transfer, discharge or refusal of re-employment, irrespective of the reason, which of course would be beyond the power of the Board. This portion of this order to meet this criticism might be changed to read substantially as follows: "discouraging membership in Oil Workers International Union, or any other labor organization of its employees, by discriminating against any member of the Oil Workers International Union, or any other labor organization, of its employees, when discharging, re-employing or transferring any employees."

These criticisms of the form of the Board's order are important of course only if this Court shall deny our petition for rehearing. We are sincerely of the opinion that the merits of this case justify its further consideration by this Court.

We earnestly and respectfully pray that this petition

for rehearing be granted and that the merits of this case be given further consideration.

Respectfully submitted, James J. Cosgrove, John R. Moran, John P. Akolt, Attorneys for Petitioner, Continental Oil Company.

[fols. 1693-1694] Certificate of Counsel

John P. Akolt, of the City and County of Denver, State of Colorado, being one of the attorneys for the petitioner, Continental Oil Company, in the above-entitled cause, does hereby state and certify that the above and foregoing petition for rehearing is filed in good faith and not for delay and that he believes same to be meritorious.

John P. Akolt.

[fol. 1695] IN UNITED STATES CIRCUIT COURT OF APPEALS

ORDER DENYING PETITION FOR REHEARING—July 31, 1940

This cause came on to be heard on the petition of petitioner for a rehearing herein and was submitted to the court.

On consideration whereof, it is now here ordered by the court that the said petition be and the same is hereby denied.

IN UNITED STATES CIRCUIT COURT OF APPEALS

MOTION FOR STAY OF ISSUANCE OF MANDATE PENDING APPLICATION FOR WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT—Filed August 9, 1940

Comes now the petitioner, Continental Oil Company, and respectfully states and shows that while the Petition for Rehearing heretofore filed in the above-entitled cause by this petitioner was denied on July 31, 1940, the Honorable Clerk of this Court has informed the undersigned counsel for petitioner that it is the intention of the Court to vacate the judgment and decree of this Court heretofore entered and hereafter to enter a long form of decree when the form thereof has been determined, thus rendering it uncertain as to when a mandate may properly issue under Rule 27 of the Rules of this Court.

Petitioner now informs the Court that it is the intention of petitioner to apply to the United States Supreme Court for a writ of certiorari directed to said judgment and decree as the same shall finally be entered herein. In order to make certain that a mandate will not be issued pending the preparation and pendency of such application for certiorari, petitioner at this time hereby prays that an order be entered herein, staying the issuance of such mandate during the time necessary for the preparation of said application for writ of certiorari, and during the pendency of said certiorari proceedings.

Respectfully submitted this 9th day of August, 1940.

James J. Cosgrove, John R. Moran, John P. Abott,  
Attorneys for Petitioner.

[File endorsement omitted.]

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[fol. 1696] IN UNITED STATES CIRCUIT COURT OF APPEALS

ORDER GRANTING MOTION FOR STAY OF MANDATE—August 12,  
1940

This cause came on to be heard on the motion of petitioner for a stay of the mandate herein and was submitted to the court.

On consideration whereof, it is now here ordered by the court that said motion be and the same is hereby granted and that no mandate of this court issue herein for a period of thirty days from this day, and that, if within said period of thirty days there is filed with the clerk of this court a certificate of the clerk of the Supreme Court of the United States that a petition for writ of certiorari, record and brief have been filed, with proof of service thereof under Section 3 of Rule 38 of the Supreme Court, the stay hereby granted shall continue until the final disposition of the case by the Supreme Court.

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IN UNITED STATES CIRCUIT COURT OF APPEALS

JUDGMENT—August 19, 1940

It appearing to the court that the order, judgment and decree entered in this cause on June 13, 1940, is insufficient, it is now here ordered by the court that the said order, judg-



ment and decree be and the same is hereby vacated, set aside and held for naught and that the following be entered in its place and stead:

The National Labor Relations Board having issued an Order against Continental Oil Company on May 9, 1939; and Continental Oil Company having petitioned this Court on May 25, 1939, to review and set aside said Order; and the National Labor Relations Board having answered said petition on July 6, 1939, requesting the enforcement of said Order; and counsel for the parties having been duly heard; and this Court having considered the matter and having on June 13, 1940, issued its decision directing that the aforesaid Order of the Board, in so far as it relates to Salt [fol. 1697] Creek Field, be neither set aside nor enforced, and that in all other respects said Order be enforced;

It Is Hereby Ordered, Adjudged and Decreed that Continental Oil Company and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Oil Workers International Union as the exclusive representative of all the employees of Continental Oil Company at Big Muddy Field, excluding the production foreman and clerical employees, but including head roustabouts, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Refusing to bargain collectively with Oil Workers International Union as the exclusive representative of the production and maintenance employees of Continental Oil Company at its Glenrock Refinery, exclusive of supervisory and clerical employees, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(c) Dominating or interfering with the administration of Independent Association of Conoco Glenrock Refinery Employees or with the formation or administration of any other labor organization of its employees, and from contributing support to said Association or to any other organization of its employees;

(d) Discouraging membership in Oil Workers International Union or any other labor organization of its employees by transferring, discharging, or refusing to re-employ any of its employees, or in any other manner dis-

criminating in regard to their hire or tenure of employment, or any term or condition of their employment;

(e) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid and protection, as guaranteed in Section 7 of the Act.

[fol. 1698] 2. Take the following affirmative action which the Board finds will effectuate the policies of the Act;

(a) Upon request, bargain collectively with Oil Workers International Union as the exclusive representative of all the employees of Continental Oil Company at Big Muddy Field, excluding the production foreman and clerical employees, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Upon request, bargain collectively with Oil Workers International Union as the exclusive representative of the production and maintenance employees of Continental Oil Company at its Glenrock Refinery, exclusive of supervisory and clerical employees, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(c) Withdraw all recognition from Independent Association of Conoco Glenrock Refinery Employees as the representative of any of its employees for the purpose of dealing with Continental Oil Company concerning grievances, labor disputes, wages, hours of employment, and other conditions of employment, and completely disestablish Independent Association of Conoco Glenrock Refinery Employees as such representative;

(d) Offer to Ernest Jones and F. D. Moore immediate and full reinstatement to the positions formerly held by them at Big Muddy Field or positions substantially equivalent thereto at said Field, without prejudice to their seniority, insurance, or other rights and privileges;

(e) Make whole Ernest Jones and F. D. Moore for any loss of pay or other pecuniary loss they may have suffered by reason of Continental Oil Company's acts by payment to each of them of a sum of money equal to that which he

would normally have earned as wages during the period from the date of the termination of his employment to the date of Continental Oil Company's offer of reinstatement, less his net earnings during that period; deducting, however from the amount otherwise due to each employee monies received by said employee during said period for work performed upon Federal, State, county, municipal, or other work relief projects and pay over the amounts so deducted to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work relief projects. [fols. 1699-1700] If an accounting shall be necessary or requested by the petitioner, Continental Oil Company, or by the said Ernest Jones or F. D. Moore in order to determine the exact amount of money due said Ernest Jones and the said F. D. Moore, or either of them, such accounting shall be had under the direction of the National Labor Relations Board, and thereupon a subsequent order shall be entered by said Board awarding the precise sum, if any, due in each instance;

(f) Procure for F. D. Moore the restoration of insurance rights, which he lost upon the termination of his employment;

(g) Post immediately in conspicuous places throughout the plants involved and keep posted for at least sixty (60) consecutive days, notices stating (1) that Continental Oil Company will cease and desist, as aforesaid; (2) that Continental Oil Company will, upon request, bargain collectively, as provided in 2 (a) and (b) above; (3) that Continental Oil Company withdraws all recognition of Independent Association of Conoco Glenrock Refinery Employees as a representative of any of its employees and completely disestablishes it as such representative;

(h) Notify the Regional Director for the Twenty-second Region in writing within ten (10) days from the date of this Decree what steps Continental Oil Company has taken to comply therewith;

And It Is Further Ordered, Adjudged and Decreed that the provisions of the aforesaid Order of the Board, in so far as they relate to Salt Creek Field, be neither enforced nor set aside.



Clerk's certificate to foregoing transcript omitted in printing.

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[fol. 1701] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 28, 1940

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Tenth Circuit is granted, limited to the first and second questions presented by the petition.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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[fol. 1702] IN SUPREME COURT OF THE UNITED STATES

STIPULATION AS TO PORTIONS OF RECORD TO BE PRINTED—Filed November 28, 1940

It is Hereby Stipulated and Agreed by and between the parties hereto, by their respective attorneys, that, in addition to the proceedings in this Court, including the Petition for Writ of Certiorari and the Order of this Court granting same in part, the following portions of the record in this case, as certified to this Court by the United States Circuit Court of Appeals for the Tenth Circuit, shall be printed as the record for use by this Court in considering and determining the questions over which this Court has taken jurisdiction pursuant to the Petition for Writ of Certiorari heretofore filed herein. The references herein are to the 1700-page, three-volume printed Transcript of Record, copies of which were filed with this Court in connection with the filing of the Petition for Writ of Certiorari.

Page 1 to Page 26, both inclusive—All.

Page 27—Down to horizontal line.

[fol. 1703] Page 36 to Page 79, both inclusive,—All.

Page 86 to Page 94, both inclusive,—All.

Page 95—Top two lines.

Page 96—Lower portion following the horizontal line.

Page 97 to Page 104, both inclusive,—All.

Page 105—Lower portion following the horizontal line.

Page 106 to Page 180, both inclusive,—All.

- Page 194—All, except top two lines.
- Page 195—Top nine lines.
- Page 235—Last 11 lines.
- Page 236 to Page 241, both inclusive,—All.
- Page 242—Top four lines.
- Page 270—The heading, "Cross Examination."
- Page 292—All, except top two lines.
- Page 293—All.
- Page 294—Top three lines.
- Page 299—All, except top two lines.
- Page 300, to Page 311, both inclusive,—All.
- Page 312—Top 11 lines.
- [fol. 1704] Page 316—The heading "Redirect Examination."
- Page 326—Last five lines.
- Page 327 to Page 328, both inclusive,—All.
- Page 329—Top 22 lines.
- Page 339—The heading, "Examination," and the words, "(By Trial Examiner Holden)."
- Page 341—Lines 25 to 38, both inclusive.
- Page 342—The heading, "Ernest Jones," to the bottom of the page.
- Page 343 to Page 365, both inclusive,—All.
- Page 366—Top 20 lines.
- Page 367—Last three lines.
- Page 368 to Page 378, both inclusive—All.
- Page 379—All, except last five lines.
- Page 383—Last ten lines.
- Page 384 to Page 459, both inclusive,—All.
- Page 460—First 24 lines.
- Page 958 to Page 962, both inclusive,—All.
- Page 963—Down to the heading, "Redirect Examination."
- Page 973—First 16 lines.
- Page 1066—Last 17 lines.
- Page 1067 to Page 1089, both inclusive,—All.
- [fol. 1705] Page 1090—Down to and including heading, "Cross Examination."
- Page 1151—Last 20 lines.
- Page 1152 to Page 1180, both inclusive,—All.
- Page 1181—First 19 lines.
- Page 1188 to Page 1190, both inclusive,—All.
- Page 1191—All, except last line.
- Page 1196—Starting with heading, "R. C. Bartels," and continuing to end of page.

- Page 1197 to Page 1306, both inclusive,—All.
- Page 1307—Down to heading, "R. P. Peterson."
- Page 1394—Last line.
- Page 1395—All.
- Page 1396—All.
- Page 1397—Down to horizontal line.
- Page 1603-1604—Respondent's Exhibit No. 3 (A) which starts on page 1603 and ends on page 1604.
- Page 1608-1610—Respondent's Exhibit No. 4 which starts on page 1608 and ends on page 1610.
- Page 1624 to Page 1646, both inclusive,—All.
- Page 1647—Down to words, "Respondent's Exhibit No. 20."
- [fol. 1706] Page 1649 to Page 1700, both inclusive,—All.

Dated this 25th day of November, A. D. 1940.

James J. Cosgrove, Ponca City, Oklahoma; John R. Moran, 624 Oil and Gas Building, Houston, Texas; Elmer L. Brock, John P. Akolt, E. R. Campbell, Milton Smith, 1300 Telephone Building, Denver, Colorado, Attorneys for Petitioner. Francis Bidle, Solicitor General, Washington, D. C.

[fol. 1707] [File endorsement omitted.]

Endorsed on cover: File No. 44,762. U. S. Circuit Court of Appeals, Tenth Circuit. Term No. 413. Continental Oil Company, Petitioner, vs. National Labor Relations Board. Petition for a writ of certiorari and exhibit thereto. Filed September 9, 1940. Term No. 413, O. T., 1940.



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CHARLES FREDERICK COOLEY  
CLERK

No. 413

IN THE

Supreme Court of the United States

October Term, 1940

CONTINENTAL OIL COMPANY, a Corporation,  
*Petitioner,*

v.

NATIONAL LABOR RELATIONS BOARD,  
*Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE TENTH CIRCUIT, AND BRIEF  
IN SUPPORT THEREOF.

✓ JAMES J. COSGROVE,  
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September, 1940



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No.

IN THE

**Supreme Court of the United States**

October Term, 1940

---

CONTINENTAL OIL COMPANY, a Corporation,  
*Petitioner,*

v.

NATIONAL LABOR RELATIONS BOARD,  
*Respondent.*

---

**PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES CIRCUIT COURT OF APPEALS FOR  
THE TENTH CIRCUIT**

---

Continental Oil Company, Petitioner herein, respectfully prays for a writ of certiorari to review the judgment of the United States Circuit Court of Appeals for the Tenth Circuit entered August 19, 1940 (R. p. 1696); rehearing denied July 31, 1940 (R. p. 1695).

**STATEMENT**

The judgment of the Circuit Court is for the enforcement (with exceptions not material here) of an order entered by the Respondent, National Labor Relations Board, against the Petitioner, Continental Oil Company, on May 9, 1939 (R. p. 36) in a proceeding brought under the National Labor Relations Act (49 Stat., 449).

The Petitioner was carrying on an oil-producing busi-



ness in the Big Muddy Field and in the Salt Creek Field, and an oil refinery business in the Town of Glenrock, all in the State of Wyoming. The proceedings involved all three of these operations. Prior to the consideration of the case by the Circuit Court Petitioner ceased operating in the Salt Creek Field, and because of this the Circuit Court, by its judgment and decree, neither enforced nor set aside the Board's order as to Salt Creek Field (R. p. 1699), thus leaving in the case only the judgment of the court in so far as it will enforce the Board's order as to the Big Muddy Field and the Glenrock Refinery.

The case before the Labor Board involved a consolidation of a petition for investigation and certification of representatives under Section 9 (c) of the Act as to the Salt Creek Field (R. p. 95) with an amended complaint involving the Salt Creek Field, the Big Muddy Field and the Glenrock Refinery, based upon charges filed by the Oil Workers International Union and alleging unfair labor practices in violation of Section 8, subsections (1), (2), (3) and (5), of the Act. The amended complaint was filed February 25, 1938 (R. p. 96). A hearing was had before a Trial Examiner designated by the Labor Board at Casper, Wyoming, on March 3, 1938, to March 17, 1938, inclusive (R. p. 121). On May 11, 1938, the Trial Examiner filed his intermediate report finding all the issues against the Petitioner (R. pp. 118 to 152).

The Board entered its "Decision, Order and Direction of Election" (hereinafter referred to as the Board's Order) on May 9, 1939 (R. p. 36).

On May 25, 1939 (R. p. 1) Petitioner filed its petition with the United States Circuit Court of Appeals for the Tenth Circuit to review the Board's Order of May 9, 1939. On July 10, 1939, the Board filed with the Circuit Court its answer to the petition for review and its request for the enforcement of the Board's Order (R. p. 20).

It is to the judgment of the Circuit Court ordering the enforcement of the Board's Order (except in particulars not material here) to which this Petition for Writ of Certiorari is directed.

The particular portions of the judgment to which this Petition for Writ of Certiorari is directed are:

(1) The enforcement of the Board's Order directing Petitioner to reinstate Ernest Jones to the position formerly held by him as an employee (R. p. 1698).

(2) The enforcement of the Board's Order directing Petitioner to reinstate F. D. Moore to the position formerly held by him as an employee (R. p. 1698).

(3) The enforcement of the Board's Order directing the Petitioner to reimburse said Ernest Jones for any loss of pay or other pecuniary loss he has incurred since the date of the termination of his employment up to the time of offer of reinstatement (R. p. 1698).

(4) The enforcement of the Board's Order directing the Petitioner to reimburse said F. D. Moore for any loss of pay or other pecuniary loss he has incurred since the date of the termination of his employment up to the time of offer of reinstatement (R. p. 1698).

(5) That portion of subdivision 2 (e) of the judgment (R. p. 1698) with reference to reimbursing Jones and Moore reading:

"deducting, however, from the amount otherwise due to each employee monies received by said employee during said period for work performed upon Federal, State county, municipal, or other work relief projects and pay over the amounts so deducted to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work relief projects; \* \* \* \* \*

With reference to the above five numbers the charge and the finding of the Board were that in April, 1936, the Petitioner had discharged Jones and Moore for union reasons in violation of the Act. They were employees of Petitioner in Big Muddy Field. The record shows that it was necessary for business reasons to reduce the number of employees in Big Muddy Field at this time by four. Instead of discharging four employees to accomplish this re-

duction in working force, Petitioner transferred four employees to other fields in which it operated. Moore and Jones were ordered transferred to the Petitioner's Hobbs, New Mexico, Field. Jones absolutely refused the transfer and quit his employment, and within ten days thereafter purchased a general merchandise store at Parkerton, Wyoming, which he has at all times since operated as proprietor thereof. Jones was also appointed United States postmaster at Parkerton, Wyoming, which position he has held since shortly after he quit his employment with Petitioner (R. p. 57).

Moore likewise refused the transfer to Hobbs, New Mexico, and gave as the reason for his refusal the illness of his wife. Upon verifying this illness, the Petitioner changed the order of transfer to a field near Fort Collins, Colorado, which Moore also refused. Thereupon, and within a day or two after the transfer order, the Petitioner offered to reinstate Moore in his job at the Big Muddy Field, but the Board found upon Moore's testimony that this reinstatement in the Big Muddy Field was to be only for the duration of his wife's illness. Moore refused the reinstatement offer under such conditions (R. p. 53). Moore's wife was still ill at the time of the hearing two years later in March, 1938. Moore's wage with the Petitioner was \$112.50 per month, without room or board. Shortly after Moore quit his employment with the Petitioner he secured a position as guard at the Wyoming State Penitentiary at Rawlins, Wyoming, which position he still held at the time of the hearing at a wage of \$70 per month, plus room and board.

(6) At the Glenrock Refinery the Petitioner had eighty employees. The Board found that Local 242 of the Oil Workers International Union was the exclusive bargaining agency of these eighty employees as the result of a petition signed by forty-six of these eighty employees in July, 1935 (R. p. 57).

The record shows that in May and June of 1937, forty-seven of the Refinery employees organized an independent union known as the Independent Association of Conoco



Glenrock Refinery Employees. The Board found that the formation of this independent union was fostered by the Petitioner and has ordered the Petitioner to withdraw all recognition from it and to bargain exclusively for all employees with Local 242 of the Oil Workers International Union. It will be noted that the basis of the finding and order as to the exclusive bargaining powers of the Oil Workers International Union is the petition signed in July, 1935. The amended complaint in the proceeding before the Board was not filed until February, 1938 (R. p. 96). The Trial Examiner's intermediate report was dated May 11, 1938 (R. p. 118). The Board's Order was dated May 9, 1939. The judgment of the Circuit Court enforcing that order was entered August 19, 1940.

The evidence (R. p. 1614) discloses that Local 242, which the Petitioner has been ordered to exclusively recognize, out of eighty employees at the Refinery had only twelve members in July, 1935, which was the maximum number from that time to the time of the hearing before the Trial Examiner, and that the membership dwindled from the twelve to as low as three in July, 1936, and to only four from July, 1937, to and including February, 1938.

The July, 1935, petition to Local 242 of the International Association of Oil Field, Gas Well and Refinery Workers of America (Board's Exhibit No. 49) which the Board found constituted a designation of Local 242 of the Oil Workers International Union as the exclusive bargaining agency for the eighty Refinery employees continuously from that time on, with the exception of the signatures of the forty-six employees thereto, reads as follows: (R. p. 1460 and 1461).

"We the employes of the Contential Oil Company Company at Glenrock Refinery constituting a substantial majority of the total working forces in the various departments have organized ourselves into Local union No. 242 of the International Association of Oil Field, Gas Well and Refinery Workers of America, in pursuance of the right of self-organization as guaranteed in the Wagner-Connery Labor Disputes Bill.

"Through this organization and our duly designated and authorized representatives and officers, we desire to make a collective bargain with our employer, as authorized by the law, and we do not want to make individual bargains with respect to these matters.

"We therefore respectfully request a conference with representatives of the management at its earliest convenience to begin negotiations to work out a collective bargain and to agree on terms of employment and orderly methods of settling differences in the relation between management and employer.

"In case the Company questions the right of the representatives of the International Association of Oil Field, Gas Well and Refinery Workers of America to speak for the undersigned employes in matters of collective bargaining, we hereby petition the Labor Disputes Board to conduct an election to determine the choice of the employes of representatives for the purpose of collective bargaining."

Attention is invited to the form of this petition and the request therein for an election.

It will be noted that the effect of the Board's order to be enforced by the court judgment is to require the Petitioner to bargain exclusively with the union having a membership of four employees as the exclusive bargaining agency for eighty employees, and this is based upon the above quoted petition to Local 242 of the International Association of Oil Field, Gas Well and Refinery Workers of America executed five years before the court judgment and four years before the entry of the Board's Order.

In this subdivision, as well as in the following subdivision No. 7, we have underscored the names, "Oil Workers International Union" and "International Association of Oil Field, Gas Well and Refinery Workers of America." A question of identity of these unions is involved which is covered by subdivision No. 8 of this Statement.

7. As to Big Muddy Field, the Board also found that

since August 12, 1935, Local 242 of the Oil Workers International Union had been the exclusive bargaining agency of the production employees in the Big Muddy Field. This finding was based upon Board's Exhibit 29 (R. p. 1435), being a petition similar in form to the Glenrock Refinery petition quoted above naming Local 242 of the International Association of Oil Field, Gas Well and Refinery Workers of America, signed by twenty-eight out of thirty-eight of the production employees in this field. However, the Union's membership list (Respondent's Exhibit 8, R. p. 1614) shows that this union had only nine members in this field in August, 1935, and that this number had dwindled to four in February, 1938, the time of the hearing before the Trial Examiner.

Specific attention is then called to Respondent's Exhibit 20 (R. pp. 1647 and 1648) which, with the exception of the signatures of the sixteen employees thereto, reads as follows:

"We, the undersigned employes of the Continental Oil Company, hereby notify aforesaid Continental Oil Company that we have formed ourselves into an association of the Production Department employees of Continental Oil Company in the Big Muddy field as provided under the Wagner Labor Relations Act and have appointed Roy Jones, I. H. Oneal and R. P. Peterson as a temporary Committee to represent us in negotiating with the Company under said act until a permanent Committee has been duly appointed."

This notice or petition was executed in June, 1937, and clearly evidences the formation of a labor organization or union. There was no charge or finding that this labor union was company-fostered or dominated. This notice was executed by sixteen out of the twenty-one employees then working in this field. This independent union has been absolutely ignored in the Board's findings and in the court's decree. Notwithstanding the fact that this independent union had as its members eighty per cent of the twenty-one employees and that no charge of company-domination was filed as against this independent union, the Board's order



which will be enforced by the court decree requires the Petitioner to deal with Local 242 of the Oil Workers International Union, with a membership of four, as the exclusive bargaining agency of the twenty-one employees, and this order is based upon the petition directed to Local 242 of the International Association of Oil Field, Gas Well and Refinery Workers of America in August, 1935, whereas the independent union, as the evidence clearly shows, was formed by the voluntary action of eighty per cent of the employees in June, 1937.

8. As pointed out above, the charges in this case against the Petitioner filed with the National Labor Relations Board were made by Oil Workers International Union (R. p. 92). The charges as well as the complaint issued by the Board against Petitioner (R. p. 96), allege violation of the provisions of the Act by the Petitioner as against the Oil Workers International Union. As to Big Muddy Field the complaint alleged (R. p. 99) that the Oil Workers International Union was at all times since August 12, 1935, the representative of a majority of the employees. The same charge was made as to the Glenrock Refinery employees (R. p. 101).

During the course of the hearing before the Trial Examiner the Board made an oral amendment to its amended complaint (R. p. 116) alleging that the Oil Workers International Union and the International Association of Oil Field, Gas Well and Refinery Workers of America were one and the same union, with a change of name made on June 12, 1937, only involved. The Petitioner put this allegation in issue by formal answer filed thereto (R. p. 116).

The Board found (R. p. 41), and the court's judgment will enforce that finding, that the Oil Workers International Union is a CIO union and that prior to June, 1937, it bore the name of International Association of Oil Field, Gas Well and Refinery Workers of America and that it assumed its present name of Oil Workers International Union at a convention held in Kansas City, Missouri, in June, 1937.

The Board's finding and order of exclusive representative rights of Local 242 at both the Big Muddy Field and the Glenrock Refinery is based upon petitions in July, 1935, signed by a majority of the employees in these two units in form which is quoted in subdivision No. 6 of this Statement. It is not disputed that at the time these petitions were signed the International Association of Oil Field, Gas Well and Refinery Workers of America was an affiliate of the Amercian Federation of Labor.

The record shows that a convention of the International Association of Oil Field, Gas Well and Refinery Workers of America was held in Kansas City, Missouri, in June, 1937 (R. p. 41). At this convention, among other things, a resolution was adopted purporting to change the name to Oil Workers International Union.

The constitution and by-laws of the International Association of Oil Field, Gas Well and Refinery Workers of America (R. pp. 1549-1551) expressly show affiliation with the American Federation of Labor and expressly provide (R. p. 1551): "No person shall be granted membership in this organization who is opposed to the teachings and principles of the American Federation of Labor, \* \* \* ." As shown by this constitution and as is judicially known, the American Federation of Labor is founded upon the principle of craft unionism.

At the June, 1937, Kansas City convention resolutions were adopted (R. pp. 1543-1553) not only changing the name to Oil Workers International Union but also changing the constitution so as to provide for industrial unions instead of craft unions, and otherwise committing the membership to the CIO principles.

Until the complaint in this action was filed the record shows that all dealings of the Petitioner with Local 242 were prior to the Kansas City convention in June, 1937. The record is silent as to the authority of the delegates to the Kansas City convention in June, 1937, to vote any change of affiliation from the AF of L Union to the CIO

Union. The record does not show that the membership of Local 242 ever had an opportunity to accept or reject membership in the organization created by the change in constitution at the Kansas City convention. The charges in this case upon which the Petitioner was found guilty were unfair labor practices and failure of recognition as to the Oil Workers International Union, and not as to the International Association of Oil Field, Gas Well and Refinery Workers of America.

### BASIS OF JURISDICTION OF THIS COURT

The basis upon which it is contended that this court has jurisdiction to review the judgment of the Circuit Court of Appeals is Section 10 (e) of the National Labor Relations Act (49 Stat. 449), and Section 240 of the Judicial Code, as amended, (U.S.C., Title 28, Sec. 347).

### THE QUESTIONS PRESENTED AND THE REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

In making the following statement of the questions presented and the reasons relied on for the allowance of the writ we will follow the numbered subdivisions 1 to 8 set forth above in the Statement. Authorities relied on are cited in the Brief.

#### Question 1

Where an employee (Ernest Jones) is ordered transferred from one place of employment to another place of employment in violation of the National Labor Relations Act and refuses to accept such transfer and quits his employment, does the National Labor Relations Board have the power to order such employee's reinstatement to his former position where it appears that immediately after the cessation of his employment he purchased, and at all times since has operated, a general merchandise store as proprietor thereof in addition to acting as United States postmaster? If such power in the Board exists, is it an abuse of discretion to order such reinstatement?



### Question 2

Where an employee (F. D. Moore) is ordered transferred from one place of employment to another place of employment in violation of the National Labor Relations Act and refuses such transfer on account of the alleged illness of his wife, and the employer, after verifying such illness, within a day or two after the transfer order offers the employee reinstatement to his old position "for the duration of his wife's illness," which offer the employee refuses and thereupon quits his employment from which he was receiving a wage of \$112.50 per month (without room and board) and accepts and retains employment at the Wyoming State Penitentiary at a wage of \$70 per month, plus room and board, and it appears that at all times up to the hearing before the Trial Examiner of the Labor Board the wife's illness continued, does the Board have the power to order such employee's reinstatement, or, if such power exists, is it an abuse of discretion to order such reinstatement?

### Question 3

Does the Board have the power, under the facts outlined in Question 1, to order the employer (Petitioner) to reimburse the employee (Ernest Jones) for pecuniary losses he may have sustained in the conduct of his general merchandise store, or, if such power exists, did the Board abuse its discretion in ordering such reimbursement?

### Question 4

Does the Board have the power, under the facts outlined in Question 2, to order the employer (Petitioner) to reimburse the employee (F. D. Moore) for pecuniary losses he may have sustained between the date he quit his employment and the date of offer of reinstatement? In any event, should not the reimbursement be limited to a period terminating at the time when he was offered reinstatement "for the duration of his wife's illness"?

### Question 5

The Board's Order requiring reinstatement of employees Moore and Jones, with reimbursement, provides:

"deducting, however, from the amount otherwise due to each employee monies received by said employee during said period for work performed upon Federal, State, county, municipal, or other work relief projects and pay over the amounts so deducted to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work relief projects; \* \* \* \* \*"

Even assuming the order of reinstatement and reimbursement to be proper, does the Board have the power to require the Petitioner, as employer, to comply with the above quoted portion of its reimbursement order, or, if it has such power, did it abuse its discretion in so ordering in this case?

*Reasons Relied on For the  
Allowance of the Writ as to Questions  
1, 2, 3, 4, and 5*

(a) The decision of the Circuit Court of Appeals in this case in ordering the reinstatement of Ernest Jones and F. D. Moore under the circumstances outlined in the above questions and in ordering reimbursement for pecuniary losses up to the time of the offer of reinstatement is in conflict with the decisions of other Circuit Courts of Appeal on the same matters, viz.; the Board has no power to order reinstatement and no power to order reimbursement unless the status of employee exists at the time of the entry of the Board's order and unless the employee has not, in the meantime, obtained any other regular and substantially equivalent employment.

(b) In ordering the reinstatement of Ernest Jones and F. D. Moore under the circumstances outlined in the above questions and in ordering reimbursement for pecuniary losses sustained prior to offer of reinstatement, the Circuit Court has decided federal questions in a way probably in conflict with applicable decisions of this court which has held that the authority of the Board to require affirmative action is remedial and not punitive.

(c) If it should be considered that the decisions of this court referred to in subdivision (b) supra are not controlling, then the Circuit Court in this case has decided im-

portant questions of federal law which have not been, but should be, settled by this court.

(d) With further reference to the point raised in Question 5, conflicting decisions have been rendered by the various Circuit Courts and this question is now pending before this court in the case of *Republic Steel Corp. v. NLRB*, 107 Fed. (2d) 472 (3); certiorari granted 60 S. Ct. 1072.

#### Question 6

Where it appears that in July, 1935, forty-six out of eighty Refinery employees designated a particular union as their bargaining agency, and thereafter, and in May and June of 1937, forty-seven of the Refinery employees organized an independent union which the Board has found to be company-fostered and dominated, and no complaint of unfair labor practice is issued against the employer until February, 1938, and it appears that the union designated in July, 1935, had only twelve members at that time and that its membership had dwindled to four in February, 1938, does the Board have the power, by its order entered on May 9, 1939, with the Circuit Court's enforcing judgment entered August 19, 1940, to require the Petitioner to recognize the union, with only four members, as the exclusive bargaining agency for its eighty Refinery employees? If such power exists, was it an abuse of discretion upon the part of the Labor Board and the Circuit Court to require such exclusive recognition without at least ordering an election to be held by the Refinery employees to determine their present choice of a bargaining agency?

#### *Reasons Relied on For Allowance of Writ as to Question 6*

(a) The decision of the Circuit Court of Appeals in this case, in ordering the Petitioner to deal exclusively with Local 242 based upon the July, 1935, petition and in not at least ordering an election to determine the present choice of the employees is in conflict with the decisions of other Circuit Courts of Appeal under similar situations.



(b) In ordering the Petitioner to deal with Local 242, having a membership of four, as the exclusive bargaining agency for the eighty Refinery employees the Circuit Court has decided a federal question in a way probably in conflict with applicable decisions of this court, which has held that the authority of the Board to require affirmative action is remedial and not punitive.

(c) If it should be considered that the decisions of this court referred to in subdivision (b) supra are not controlling, then the Circuit Court in this case has decided an important question of federal law which has not been, but should be, settled by this court.

#### Question 7

Where it appears that in August, 1935, twenty-eight out of thirty-eight production employees in the Big Muddy Field designated Local 242 as their bargaining agency, and that the Petitioner bargained with that union, it being the only union in the field, but the Board has found that the Petitioner committed an unfair labor practice in stating that it did not recognize that local as the bargaining agency except for its own members, does the Board have the power by an order entered in May, 1939, to be enforced by the Circuit Court's judgment entered in August, 1940; to require the Petitioner to recognize Local 242 as the exclusive bargaining agency in the field, where it further appears that in August, 1935, Local 242 had only nine members in this field and that its membership had dwindled to four in February, 1938, the time of the hearing before the Trial Examiner, and where it further appears that in June, 1937, sixteen out of the twenty-one employees then working in the field formed an independent union against which no charge of company domination has been made? If the Board had such power, was it an abuse of discretion to so order under the above circumstances without at least requiring an election to determine the present choice of the employees as to their bargaining agency?

#### *Reasons Relied on For the Allowance of Writ as to Question 7*

(a) Petitioner relies on each of the reasons stated

above in connection with Question 6.

(b) The Circuit Court, in ordering exclusive recognition of Local 242, with no charge of company domination having been made against the independent union organized in June, 1937, and without at least requiring an election, has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by the National Labor Relations Board, as to call for an exercise of this court's power of supervision.

### Question 8

Where at the time a local union acquires exclusive representative rights for a particular unit it is a member of a national union which is an affiliate of the American Federation of Labor, has the Board the power to require the Petitioner thereafter to deal exclusively with a local union of the same name where it appears that by change in its constitution the national union not only changed its name but also withdrew its allegiance from the American Federation of Labor and declared its allegiance to the Committee for Industrial Organization, and where it does not appear that the members of the local voted for or authorized such change of affiliation, and where it further appears that all acts charged against Petitioner as being unfair labor practices as against the local occurred prior to the change of affiliation and the union did not seek to bargain with the Petitioner subsequent to the change of affiliation and prior to the filing of charges with the Labor Board? Under such circumstances can it be said that the local union, which was an affiliate of the American Federation of Labor, and the present local union, which is an affiliate of the Committee for Industrial Organization, are one and the same union? If the Board had the power to order such recognition, did it abuse its discretion in doing so without at least ordering an election to determine the present choice of the employees as to their bargaining agency?

### *Reasons Relied on For the Allowance of Writ as to Question 8*

Petitioner relies on each of the reasons stated above in connection with Questions 6 and 7.

WHEREFORE, for the above reasons, supported by the brief appended thereto and the argument and citation of authorities contained therein, it is respectfully submitted that this Petition for Writ of Certiorari should be granted.

**CONTINENTAL OIL COMPANY**  
Petitioner

By

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## **BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI**

### **SUBJECT INDEX**

A subject index covering this brief and the petition for writ of certiorari precedes the petition.

### **THE OPINIONS BELOW**

The opinion of the Circuit Court of Appeals for the Tenth Circuit in this case is reported in 113 Fed. (2) 473 (Adv. Op.). It was handed down June 13, 1940, with rehearing denied July 31, 1940. The opinion appears in the record filed herein at page 1649, et seq. The May 9, 1939, "Decision, Order and Direction of Election" of the National Labor Relations Board, which is the subject matter of this case, appears in the record at page 36, et seq., and is reported in 12 NLRB, No. 87.

### **JURISDICTION**

The judgment of the Circuit Court of Appeals for the Tenth Circuit was entered August 19, 1940 (R. p. 1696); rehearing denied July 31, 1940 (R. p. 1695). Jurisdiction of this court is invoked under Section 10 (e) of the National Labor Relations Act (49 Stat. 449) and Section 240 of the Judicial Code, as amended (U.S.C., Title 28, Sec. 347).

### **STATEMENT OF THE CASE**

This appears at pages 1 to 10 of the petition for writ of certiorari.

The questions presented and the reasons relied on for the allowance of the writ appear at pages 10 to 15 of the Petition for Writ of Certiorari.

### **SPECIFICATION OF ERRORS TO BE URGED**

The following specifications of errors are urged in connection with "The Questions Presented" as set forth in the Petition for Writ of Certiorari at pages 10 to 15.

The Circuit Court of Appeals erred:

1. In ordering the reinstatement of Ernest Jones.
2. In ordering the reinstatement of F. D. Moore.
3. In ordering the Petitioner to reimburse Ernest Jones, for pecuniary losses he may have sustained in the conduct of his general merchandise store.
4. In ordering the Petitioner to reimburse F. D. Moore for pecuniary losses he may have sustained, and in any event not limiting such reimbursement to a period terminating at the time he was offered reinstatement "for the duration of his wife's illness."
5. In ordering the Petitioner to deduct from the reimbursement payments directed to be made to Moore and Jones moneys received by them for work performed upon federal, state, county, municipal or other work relief projects and to pay over the amounts so deducted to the appropriate fiscal agency of the federal, state, county, municipal or other government or governments which supplied the funds for said work relief projects.
6. In ordering the Petitioner to bargain with the Oil Workers International Union as the exclusive representative of all its employees in the Glenrock Refinery.
7. In ordering the Petitioner to bargain with the Oil Workers International Union as the exclusive representative of all its employees in the Big Muddy Field.
8. In enforcing the Board's findings that the International Association of Oil Field, Gas Well and Refinery Workers of America, an affiliate of the American Federation of Labor, and the Oil Workers International Union, an affiliate of the Committee of Industrial Organization, are identical, and that the Petitioner violated any of the provisions of the National Labor Relations Act as to the Oil Workers International Union, and in requiring the Petitioner to recognize the Oil Workers International Union as the exclusive bargaining agency at the Glenrock Refinery and in the Big Muddy Field on the basis of identity of the two unions.

### ARGUMENT

A summary of the facts, together with a statement of the eight questions presented and the reasons relied on for the allowance of the writ is set forth in the Petition to which reference is hereby made. In our argument on each of the eight questions presented we will briefly summarize the facts in the respective questions as may be required.

#### Did the Board Have the Power to Order the Reinstatement of Ernest Jones, or Abuse Its Discretion in So Doing?

This is the question presented in Question 1 in the Petition (p. 10).

Section 10 (c) of the National Labor Relations Act (hereinafter sometimes referred to as the Act), 49 Stat. 449, provides that the Board shall have the power, where it finds an unfair labor practice, to issue an order requiring the employer "to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act."

Section 2 (3) of the Act defines an employee as follows:

"The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse."

It will be noted that under Section 10 (c) quoted above the reinstatement power of the Board is limited to "employees."

In construing the reinstatement powers of the Board contained in Section 10 (c) with the definition of an em-



ployee contained in Section 2 (3) the Circuit Courts of Appeal for the Second, Third, Fourth and Ninth Circuits have held that the Board has no power to order reinstatement unless the status of an employee exists at the time of the entry of the Board's order, and unless the employee has not, in the meantime, obtained any other regular and substantially equivalent employment.

*Mooresville Cotton Mills v. NLRB* (4th), 94 F. (2d) 61, 66.

*Standard Lime & Stone Co. v. NLRB* (4th), 97 F. (2d) 531, 535.

*NLRB v. Carlisle Lumber Co.* (9th), 99 F. (2d) 533, 537, 538.

*NLRB v. Hearst* (9th), 102 Fed. (2d) 658, 664.

*NLRB v. National Motor Bearing Co.* (9th), 105 F. (2d) 652, 662.

*NLRB v. Botany Worsted Mills* (3rd), 106 F. (2d) 263, 269.

Typical of the reasoning in the above cases is the following quotation from *NLRB v. Carlisle Lumber Co.* (9th), 99 Fed. (2d) 533, 537:

"It should be noted that only 'employees' may be reinstated. Section 2 (3) of the act, 29 U.S.C.A. sec. 152 (3), defines 'employee' to 'include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment.' Respondent makes several contentions regarding the time when the men are to be considered as employees. I think that since the act provides that the Board may 'order \* \* \* reinstatement of employees with or without back pay' before it could make such an order it would first have to determine whether or not the men were 'employees' at the time of its order. If the men were not 'employees' the Board would have no

power to order their reinstatement. Therefore, the Board must determine when it makes its order, whether or not the men are 'employees' at such time. The Board made a like construction of the act by its finding that the men in question had not obtained substantially equivalent employment on September 26, 1936, the date of its first order, partially enforced by our former decision.

"If any of the men did obtain such employment the 'employee' status, as respondent contends, could not be revived by their voluntarily or involuntarily ceasing such employment."

In the present case Jones refused his transfer and quit his employment at the end of April, 1936. Within ten days thereafter he purchased a general merchandise store at Parkerton, Wyoming, which he has at all times since operated as proprietor thereof, in addition to acting as United States Postmaster pursuant to appointment. He was conducting the merchandise store and acting as postmaster at the time of the hearing before the Trial Examiner in February, 1938, with no showing in the record that he was not still doing so at the time the Board entered its Order on May 9, 1939.

Clearly, one who becomes a proprietor of a merchandise store does not retain his status as an employee.

It is submitted that the decision of the Circuit Court in this case ordering the reinstatement of Jones is in direct conflict with the decisions from the other circuits above cited holding that the status of an employee must exist at the time of the entry of the Board's Order. For this reason, the Petition for Writ of Certiorari should be granted.

Again this court has held that the power of the Board to require affirmative action is remedial and not punitive. We quote Mr. Chief Justice Hughes in the following two cases :

*Consolidated Edison Co. v. NLRB*, 305 U. S. 197, 59 S. Ct. 206, 83 L. Ed. 126, 143:

"The power to command affirmative action is remedial, not punitive, and is to be exercised in aid of the Board's authority to restrain violations and as a means of removing or avoiding the consequences of violation where those consequences are of a kind to thwart the purpose of the Act. The continued existence of a company union established by unfair labor practices or of a union dominated by the employer is a consequence of violation of the Act whose continuance thwarts the purposes of the Act and renders ineffective any order restraining the unfair practices."

*NLRB v. Fansteel Metal Corp.*, 306 U. S. 240, 59 S. Ct. 490, 83 L. Ed. 627, 636:

"The authority to require affirmative action to 'effectuate the policies' of the Act is broad but it is not unlimited. It has the essential limitations which inhere in the very policies of the Act which the Board invokes. Thus in *Consolidated Edison Co. v. National Labor Relations Bd.* (decided December 5, 1938) 305 U. S. 197, ante, 126, 59 S. Ct. 206, we held that the authority to order affirmative action did not go so far as to confer a punitive jurisdiction enabling the Board to inflict upon the employer any penalty it may choose because he is engaged in unfair labor practices, even though the Board is of the opinion that the policies of the Act may be effectuated by such an order. We held that the power to command affirmative action is remedial, not punitive, and is to be exercised in aid of the Board's authority to restrain violations and as a means of removing or avoiding the consequences of violation where those consequences are of a kind to thwart the purposes of the Act."

We submit that where an employee, although discharged in violation of the Act, thereafter voluntarily ceases to be or to attempt to be an employee of anyone, but becomes a proprietor of a business and thus enters the class of an employer, it is a gross abuse of discretion, even if underlying power might exist in the Board, for the Board to order



the reinstatement of such former employee. Such an affirmative order is punitive and not remedial, and necessarily violates the rules laid down by this court in the Consolidated Edison and Fansteel cases supra, and similar cases.

As a second ground for granting the writ, therefore, we submit that the decision of the Circuit Court in this case is in conflict with the above applicable decisions of this court.

As a third ground for granting the writ, we respectfully submit that if it be considered that the Consolidated Edison and Fansteel decisions of this court and similar decisions are not directly controlling, nevertheless the proposition presents an important question of federal law which should be settled by this court. A serious question as to the extent of the power of the Board is presented. This question should be determined so that employer, employee, the public, and the Board alike will know where they stand with reference to this very important question involving the reinstatement of former employees. Particularly is the question important where the former employee has become a proprietor himself.

#### **Did the Board Have the Power to Order the Reinstatement of F. D. Moore, or Abuse Its Discretion in So Doing?**

This is the question presented in Question 2 in the Petition (p. 11).

Reference is made to the authorities cited and quoted in the immediately preceding subdivision of this Brief.

Moore at the time he refused reinstatement as an employee in the Big Muddy Field, as found by the Board "for the duration of his wife's illness" was earning \$112.50 per month without room or board (p. 4). Shortly thereafter he secured a position as guard at the Wyoming State Penitentiary at Rawlins, Wyoming, which position he still held at the time of the hearing at a wage of \$70 per month, plus room and board. This employment so secured at the penitentiary, we submit, constituted "other regular and substan-

tially equivalent employment," as contemplated by Section 2 (3) of the Act quoted above, and consequently Moore was not an employee at the time of the Board's order, entitled to reinstatement under Section 10 (c) of the Act.

The decision of the Circuit Court, in enforcing this part of the Board's Order, is in conflict with the decisions of the other circuits cited in the previous subdivision hereof.

The action of the Board, in ordering this reinstatement, is clearly punitive and not remedial, and if basic power to order such reinstatement shall be held to exist in the Board, then exercise of that power under the circumstances disclosed is clearly an abuse of discretion.

**Did the Board Have the Power to Order Reimbursement of Ernest Jones For Pecuniary Losses He May Have Sustained in the Conduct of His General Merchandise Store, or Abuse Its Discretion in So Doing?**

This is the question presented in Question 3 in the Petition (p. 11).

Within ten days after Jones refused his transfer to Hobbs, New Mexico, and quit his employment at the Big Muddy Field he purchased a general merchandise store at Parkerton, Wyoming, which he was still operating, as proprietor thereof, at the time of the hearing before the Trial Examiner. In addition to this, he was United States postmaster pursuant to appointment.

Subdivision 2 (e) of the Judgment of the Circuit Court (R. pp. 1698-1699) reads:

"Make whole Ernest Jones and F. D. Moore for any loss of pay or any other pecuniary loss they may have suffered by reason of Continental Oil Company's acts by payment to each of them of a sum of money equal to that which he would normally have earned as wages during the period from the date of the termination of his employment to the date of Continental Oil Company's offer of reinstatement, less his net earnings during that period, deducting, however from the

amount otherwise due to each employee monies received by said employee during said period for work performed upon Federal, State, county, municipal, or other work relief projects and pay over the amounts so deducted to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work relief projects. If an accounting shall be necessary or requested by the petitioner, Continental Oil Company, or by the said Ernest Jones or F. D. Moore in order to determine the exact amount of money due said Ernest Jones and the said F. D. Moore, or either of them, such accounting shall be had under the direction of the National Labor Relations Board, and thereupon a subsequent order shall be entered by said Board awarding the precise sum, if any, due in each instance;"

We find no case, either in this court or the Circuit Courts, involving a reimbursement order where the former employee has become a proprietor of a mercantile business and the former employer has been ordered to reimburse him for the loss he may have sustained in the conduct of that business up to the amount he would have earned had he remained an employee of the Petitioner. Clearly, the Circuit Court's judgment in this respect is in conflict with the decisions cited above (p. 20) holding that the status of an employee must exist at the time of the Board's order to justify an order of reinstatement. No reimbursement is justified without reinstatement. If on any theory reimbursement in any case is justified in the absence of reinstatement or an offer of reinstatement, there is no power found in the Act authorizing the Board to require an employer to subsidize a business enterprise in which the former employee may have chosen to venture. Such an order is clearly punitive and not remedial and within the condemnation of the decisions of this court in the cases cited above (p. 21).

If it should be considered that this situation is not controlled by the decisions of this court cited above or in conflict with the decisions of the other Circuit Courts



cited above, then it is respectfully submitted that the question presented is an important question of federal law which has not been, but should be, settled by this court.

**Did the Board Have the Power to Order Reimbursement of F. D. Moore for Pecuniary Losses He May Have Sustained or Abuse Its Discretion in So Doing, and in Any Event Should Not Any Reimbursement be Only for the Period Which Terminated at the Time He Was Offered Reinstatement "For the Duration of His Wife's Illness"?**

This is the question presented in Question 4 of the Petition (p. 11).

Moore was ordered transferred to Hobbs, New Mexico, on April 26th or April 27th, 1936 (R. p. 427). He refused the transfer because of his wife's alleged illness. Within five or six days thereafter he was offered his old job back in the Big Muddy Field, but the Board found that this offer of reinstatement was "for the duration of his wife's illness" (R. p. 53, 427).

In subdivision 2 (d) of the judgment (R. p. 1698) the Circuit Court has ordered the Petitioner to offer Moore immediate and full reinstatement to the position formerly held by him in the Big Muddy Field.

In subdivision 2 (e) of the judgment quoted above the Circuit Court has ordered the Petitioner to reimburse Moore "from the date of the termination of his employment to the date of Continental Oil Company's offer of reinstatement."

As grounds for the Writ of Certiorari we urge the same reasons as stated above with reference to the order of reimbursement of Jones, namely; the conflict with the decisions of other Circuit Courts, the conflict with the decisions of this court holding that the Act is remedial and not punitive, and the importance of the question involved, if it should be held that the point is not covered by the decisions of this court or conflict with the decisions of the other Circuit Courts.

In addition to the above, we specifically urge that this particular order is beyond the power of the Board or, if within the power, it shows an abuse of discretion in that the order will require reimbursement from the date of the termination of Moore's employment up to the time in the future when the Petitioner may make some new offer of reinstatement to Moore. The evidence and the Board's finding (R. p. 53, 427) clearly show that the Petitioner did offer reinstatement to Moore within five or six days after Moore refused his transfer to Hobbs. It is true that the Board has found that that offer of reinstatement was only for the duration of his wife's illness. That illness was still continuing at the time of the hearing before the Trial Examiner (R. pp. 436, 437, 438). Any loss which Moore may have sustained subsequent to this offer of reinstatement is certainly the result of his refusal to accept the reinstatement. That loss would not have been sustained had he accepted the offer of reinstatement. To compel the Petitioner at this time to make a new offer of reinstatement and to reimburse Moore for his losses up to the time of the new offer of reinstatement is clearly punitive and not remedial. It is beyond the power of the Board, or, if it should be held within its basic power, its exercise under the circumstances disclosed was clearly an abuse of discretion.

**Did the Board Have the Power to Require Deduction From Reimbursement Moneys Ordered Paid to Jones and Moore Moneys Paid Them by Federal and Other Governmental Relief Agencies and to Require Petitioner to Pay Such Deducted Moneys to the Relief Agencies? If Such Power in the Board Exists, Did it Abuse Its Discretion in Making Such Order?**

This is the question presented in Question 5 in the Petition (p. 11).

At pages 11-12 of the Petition and at page 24 of this Brief we have quoted the portion of subdivision 2 (e) of the judgment (R. p. 1698) to which this question is directed. The Petitioner is required to deduct from moneys which may be found due Jones and Moore under the reimburse-

ment order amounts which they may have received for work performed upon federal and other governmental relief projects and to pay such amounts to the appropriate federal or other governmental relief agency which supplied the funds for the relief projects.

There is certainly no express authority in the Act for any such order. Under certain circumstances the Board has the power to order reimbursement of a discharged employee, but there is nothing in the Act which permits the Board to require an employer to make whole any third person, whether it be a governmental agency or otherwise, who has sustained some loss because of the discharge of the employee. Presumptively, any federal or other governmental agency for which such employee might have worked got value received for any payments made by it. There is no reason in law or equity why a former employer, irrespective of the reason for the discharge, should be required to pay the wage of an employee of the federal government or any other governmental agency for services rendered to such governmental agency. There is no justification in law or equity for making a collection agency out of the employer to collect money for a governmental agency. Such is our objection to this portion of the Board's order. We claim it is penal in character, beyond the power of the Board, or an abuse of discretion if within the power of the Board.

There is a direct conflict on this question in the decisions of the various circuits. The Second Circuit, in *NLRB v. Leviton Mfg. Co.*, 111 Fed. (2d) 619, 621 (Adv. Op.), and the Ninth Circuit, in *NLRB v. Tovrea Packing Co.*, 111 Fed. (2d) 626 (Adv. Op.), have refused to order enforcement of such provision as being invalid, and so also, we are informed, the Seventh Circuit in the case of *M. H. Ritzwoller v. NLRB*, decided July 16, 1940 (unreported); while the First Circuit, in *NLRB v. Somerset Shoe Co.*, 111 Fed. (2d) 681 (Adv. Op.), and the Third Circuit, in *Republic Steel Corp. v. NLRB*, 107 Fed. (2d) 472, and in *Union Drawn Steel Co. v. NLRB*, 109 Fed. (2d) 587, have approved such provision.



This court has granted certiorari and assumed jurisdiction of this question in the case of *Republic Steel Corp. v. NLRB*, *supra*, 107 Fed. (2d) 472; certiorari granted 60 S. Ct. 1072, 84 L. Ed. 902.

It is submitted that the conflict in the Circuit Court decisions and the assumption of jurisdiction of this question by this court justifies the issuance of a writ of certiorari in the present case.

**Did the Board Have the Power to Order Petitioner to Deal With the Oil Workers International Union as the Exclusive Bargaining Agency at Either the Glenrock Refinery or the Big Muddy Field, Or, If It Had Such Power, Did It Abuse Its Discretion in Making Such Order Without Requiring an Election to Determine the Present Choice of the Employees as to Their Bargaining Agency?**

These are questions presented in Questions 6 and 7 in the Petition (pp. 13 and 14).

As shown in the Statement (p. 5), the Board's Order requiring exclusive recognition of the Oil Workers International Union at the Refinery is based upon a petition directed to Local 242 of the International Association of Oil Field, Gas Well and Refinery Workers of America, executed in July, 1935, by forty-six out of eighty employees. In June, 1937, forty-seven out of the eighty employees organized an independent union which the Board has found to be company-dominated and has ordered its disestablishment as a bargaining agency. The complaint against the Petitioner was filed in February, 1938; the hearing was had in March, 1938; the Board's Order was entered in May, 1939; and the court's enforcement order in August, 1940. Five years have elapsed since the July, 1935 petition was signed which forms the basis of the Board's exclusive recognition order.

Local 242 had only twelve members in July, 1935. Its membership had dwindled to three in July, 1936, and was only four at the time of the hearing in 1938.

In the Big Muddy Field (see Statement, p. 7, et seq.) the Board likewise ordered Petitioner to deal exclusively with Local 242 based upon the petition signed in August, 1935, by twenty-eight out of thirty-eight employees.

In June, 1937, sixteen out of the twenty-one employees then working in this field formed an independent union. (See Statement, p. 7, et seq.) No charge of any kind against this union or against the Petitioner on account of its formation or existence has been made. No finding has been made that it was company-fostered or dominated. It has been completely ignored in the Board's order and the court's judgment.

Local 242 had only nine members in this field in August, 1935, and this number had dwindled to four in February, 1938. It will be seen that the effect of the judgment is to require the Petitioner at the Glenrock Refinery to bargain exclusively with a union having only four members for its eighty employees. Likewise in Big Muddy Field the order and judgment will require the Petitioner to bargain with a union having only four members for its twenty-one employees. Both orders are based upon petitions signed four years before the Board's order was entered and five years before the court's judgment was entered, and this notwithstanding the formation of the independent union in the Big Muddy Field in June, 1937, against which no charge of company domination has been filed.

It is the Petitioner's position that these orders are beyond the power of the Board; that they are penal in character, and, if within the power of the Board, show abuse of discretion as they cannot possibly further the purposes of the Act.

The judgment in this respect is in conflict with the decisions of other circuits where under similar circumstances the record showed a questionable present bargaining choice of the employees and the court ordered an election to determine the present choice instead of ordering recognition based upon a majority claim secured a considerable period of time prior to the entry of the Board's order.

*NLRB v. National Licorice Co.*, (2), 104 Fed. (2d) 655, 658.

*Hamilton-Brown Shoe Co. v. NLRB*, (8) 104 Fed. (2d) 49, 56.

*NLRB v. American Mfg. Co.*, (2), 106 Fed. (2d) 61, 68.

*NLRB v. Bradford Dyeing Ass'n*, (1), 106 Fed. (2d) 119, 125.

*Cupples Co. v. NLRB*, (8) 106 Fed. (2d) 100, 117.

*NLRB v. Fansteel Metal. Corp.*, 59 S. Ct. 490; 306 U. S. 240; 83 L. Ed. 627, 638.

We quote the following excerpts from *Hamilton-Brown Shoe Co. v. NLRB*, supra, as typical of the above decisions:

"It is more than a year and a half since the hearing was held before the Board. Prior to the filing of the transcript, a showing was made that the Union no longer represented a majority of the employees, but that 90% of them had transferred their affiliation to the Boot and Shoe Workers Union and Local 176. Yet the Board arbitrarily refused to consider or investigate this claim, but entered its order requiring the employer to recognize the Union as the exclusive bargaining representative of the employees.

\*\*\*\*\*

"\*\*\*\*\* We are of the view that it would be arbitrary and unfair, and not in keeping with either the letter or the spirit of the Act, to require the employer and its employees to conduct their negotiations through an agency not fairly representing a majority of the employees. In the face of the record as it stands, it can not be assumed that the Union is now the accredited representative of the employees, but the showing made, and it stands without dispute, is at least sufficient to require investigation and to cause a court of equity to inquire whether an order requiring both the employer and the employees to recognize the Union as



the bargaining agency should be enforced in the face of circumstances making such enforcement unwise, if not illegal. A court of equity will not do useless, unjust, or inequitable things. In *re Hawkins Mortgage Co.*, 7 Cir., 45 F. 2d 937. Courts do not deal with abstractions. The proceedings here are substantially proceedings in equity in that equitable rules are applicable. *National Labor Relations Board v. Cherry Cotton Mills*, 5 Cir., 98 F. 2d 444. This court is granted power to modify orders of the Board (Section 10 (f)).

"We conclude that the order should be modified in two particulars:\*\*\*\*\* (2) that part of the order requiring the Company to recognize only the Union as the bargaining agency of the employees is set aside and the Board directed to determine the choice of the employees by requiring an election after the status quo shall have been restored by disestablishing the company union and by the reinstatement of the wrongfully discharged employees. After the Board shall have determined the issue of representation by the holding of an election, it will then issue a certificate certifying an exclusive bargaining representative under Section 9 (c) of the Act, and enter such supplemental order or orders as may be necessary to enforce such certification. \* \* \* \* \*

We further submit that the judgment ordering exclusive recognition of Local 242 is in conflict with applicable decisions of this court.

In *NLRB v. Fansteel Metal Corp.*, 59 S. Ct. 490, 306 U. S. 240, 83 L. Ed. 627, 638, this court said:

"Respondent resumed work about March 12, 1937. The Board's order was made on March 14, 1938. In view of the change in the situation by reason of the valid discharge of the 'sit-down' strikers and the filling of positions with new men, we see no basis for a conclusion that after the resumption of work Lodge 66 was the choice of a majority of respondent's employees for the purpose of collective bargaining. The Board's order

properly requires respondent to desist from interfering in any manner with its employees in the exercise of their right to self-organization and to bargain collectively through representatives of their own choosing. But it is a different matter to require respondent to treat Lodge 66 in the altered circumstances as such a representative. If it is contended that Lodge 66 is the choice of the employees, the Board has abundant authority to settle the question by requiring an election."

*National Licorice Co. v. NLRB*, 60 S. Ct. 569, 84 L. Ed. (Adv. Op.) 533, 539:

"\*\*\*\*\* Such injury, if any, as the petitioner might have suffered from the Board's order requiring it to recognize and bargain with the Union, is avoided by the direction of the Court of Appeals that this part of the order be conditioned upon a determination by an election that the Union is still the choice of a majority of the employees. The Board has not petitioned for certiorari and does not complain of this direction."

The Board's Order in this case was handed down May 9, 1939. Since that time the Board itself has changed its former policy and is now ordering elections under similar circumstances. We quote from *Cudahy Packing Co.*, 13 NLRB, No. 61, decided July 12, 1939:

"The United claims that it should be certified upon the proof offered. The Company and the Independent, however, assert that an election must be held in order to ascertain the true wishes of the employees. We are thus faced with conflicting claims as to which of two labor organizations, each designated by a substantial number of the employees involved, is entitled, under the Act, to represent all of them. Our determination of representatives looks to the initiation of collective bargaining between the Company and its employees. We believe that since each of two contesting labor organizations has proved substantial adherence among the employees the bargaining relations which result will be more satisfactory from the beginning if the doubt and

disagreement of the parties regarding the wishes of the employees is, as far as possible, eliminated. Although in the past we have certified representatives without an election upon a showing of the sort here made, we are persuaded by our experience that the policies of the Act will best be effectuated if the question of representation which has arisen is resolved in an election by secret ballot. We shall, accordingly, direct that such an election be held."

Numerous decisions of the National Labor Relations Board handed down since the Cudahy case follow this ruling.

In addition to the above, we again point out that as to Big Muddy Field the record shows that eighty per cent of the employees formed an independent union two years subsequent to the time when Local 242 claims to have secured its majority representation. No charge of any kind is made as against the independent union. Under such circumstances it is our position that the judgment of the court ordering exclusive recognition of Local 242 will enforce an order of the Board entirely beyond its power. It constitutes a denial of due process and equal protection in violation of the applicable provisions of the federal constitution to thus destroy the independent union without a charge or hearing of any kind. This, we submit, is a departure from the accepted and usual course of judicial proceedings which calls for an exercise of this court's power of supervision.

**The Question of the Identity of Oil Workers International Union and International Association of Oil Field, Gas Well and Refinery Workers of America.**

This is the question presented in Question 8 in the Petition (p. 15).

As set forth in the Statement, in July, 1935, at the Refinery forty-six out of the eighty employees, as found by the Board, designated Local 242 of the International Association of Oil Field, Gas Well and Refinery Workers of America as their bargaining agency.



In August, 1935, in the Big Muddy Field twenty-eight out of the thirty-eight employees then working designated this same local as their bargaining agency.

As pointed out above, in 1937 an independent union was organized at the Refinery, having forty-seven out of the eighty employees as members. This union the Board has ordered disestablished. Also in 1937 in the Big Muddy Field an independent union was formed having as its members sixteen out of the twenty-one employees then working. No charge against this union has been made. It has not been ordered disestablished.

The membership of Local 242 at the time of the hearing in March, 1938, was four at the Refinery and four in the Big Muddy Field.

The order of the Board to be enforced by the court judgment (R. p. 1697) requires the Petitioner to recognize Oil Workers International Union (not Local 242) as the exclusive bargaining agency at both the Refinery and in Big Muddy Field.

The Board's order of exclusive recognition is based solely upon the 1935 petitions referred to above. The Board found that the Petitioner had committed unfair labor practices in failing to give exclusive recognition to Local 242 based upon the 1935 petitions.

The record shows that at Glenrock Refinery this union made no attempt to bargain with Petitioner upon any matter subsequent to January 14, 1936 (R. p. 265). The record also shows that in the Big Muddy Field this union made no attempt to bargain with the Petitioner subsequent to May 8, 1936 (R. pp. 286-288).

In June, 1937, which was more than a year after the last bargaining between the union and Petitioner, and which was two years after the 1935 petitions were executed upon which the Board based its findings of unfair labor practices and orders of exclusive recognition, a convention of the International Association of Oil Field, Gas Well and Refinery Workers of America was held in Kansas City,

Missouri (R. p. 41). At this convention, among other things, a resolution was adopted purporting to change the name to Oil Workers International Union. The Board has found (R. p. 41) that the only change made at this convention was a change in name, and that continuity in organization was preserved. This, we submit, is contrary to the uncontradicted evidence in the record. At pages 1549 to 1551 of the record is set forth the constitution and by-laws of the International Association of Oil Field, Gas Well and Refinery Workers of America which shows this union to be an affiliate of the American Federation of Labor and pledged to its craft union principles, with membership limited to employees adhering to such principles. At pages 1543 to 1553 of the record appear certain proceedings had and resolutions adopted at the Kansas City convention, including changes in the constitution. It appears (R. p. 1544) that the American Federation of Labor had revoked the charter of the International Association of Oil Field, Gas Well and Refinery Workers of America. So this union was no longer an affiliate of the American Federation of Labor to which Local 242 in 1935 had directed its petitions, which petitions were found by the Board to give that local exclusive representative rights. At the convention the constitution was changed so as to give allegiance to the Committee for Industrial Organization. A new constitution was adopted (R. pp. 1551-1553) which contains a pledge to the principles of industrial organization and excludes from membership all not adhering thereto.

The Oil Workers International Union is admittedly a CIO union. The Petitioner has been directed to recognize that CIO union as the exclusive bargaining agency at the Refinery and in Big Muddy. This CIO union at no time was designated by any of the employees at either the Refinery or Big Muddy as a bargaining agency. The record shows no authority for anyone at the Kansas City convention to bind the membership of Local 242 as a CIO member or affiliate. All bargaining which the Petitioner at any time carried on with Local 242 was with it as a chartered union of the

American Federation of Labor. No bargaining of any kind has ever been carried on with the CIO. The CIO at no time requested the Petitioner to bargain; yet it was the CIO Oil Workers International Union which filed the charges against Petitioner alleging unfair labor practice as against it in failing to bargain with it, and it is this CIO union which the Petitioner is directed to recognize exclusively, based upon the representative rights found by the Board to have been vested in the American Federation of Labor union as the result of the 1935 petitions.

We submit that the court will take judicial notice that a CIO union and an AF of L union cannot be one and the same. The principles of the two organizations are diametrically opposed. It is impossible for an employee to adhere to both principles at the same time or to belong to both unions in the same employment.

The Seventh Circuit in *Jefferson Electric Co. v. NLRB*, 102 Fed. (2d) 949, 953, has taken judicial notice of the distinction between a CIO union and an A F of L union. We quote (p. 953):

"This tripartite controversy presents a bitter contest between the American Federation of Labor and the Committee for Industrial Organization, each labor organization seeking recognition as the sole and exclusive bargaining representative of the same group of employees. We take judicial notice that the recent past has brought a distinct cleavage in the American labor movement, dividing labor into warring factions and leaving in its wake unnecessary unrest and strife."

The Board itself has recognized that the Oil Workers International Union is an affiliate of CIO.

*In the Matter of The Texas Company*, 4 NLRB, 27.

Additional authorities showing the non-identity of an AF of L union and a CIO union and the absolute impossibility of maintaining the identity of a union where a change of affiliation is made from the American Federation of Labor are the following:



*M. & M. Wood Working Co. v. Plywood & Veneer Workers Local Union* (Dist. Ct., Ore.), 23 Fed. Sup. 11, 18.

*Low v. Harris* (7), 90 F. (2d) 783.

*M. & M. Wood Working Co. v. NLRB* (9), 101 F. (2d) 938, 941.

Applicable principles are also announced in:

*Weighers Warehousemen, etc. Union v. Green, et al.* (Ore.), 72 Pac. (2d) 55.

*Hall v. Moorin* (Mo.), 293 S. W. 435.

*Bear v. Heasley* (Mich.), 57 N. W. 270.  
63 C. J. 662, 693.

Quoting briefly:

*M. & M. Wood Working Co. v. Plywood & Veneer Workers Local Union* (Dist. Ct., Ore.), 23 Fed. Sup. 11, 18:

"Thereafter, not by reason of any difficulty with plaintiff but because of disgust over the domination of certain officers of the Carpenters & Joiners Union, certain members attempted to change the unit from one affiliated with the American Federation of Labor to one controlled and chartered by the Committee for Industrial Organization. Even courts know that these two parent associations are hostile and antagonistic. Therefore, even if there had been a unanimous secession, the organization chartered by the Committee for Industrial Organization would not be the same as the original unit chartered under the auspices of the American Federation of Labor with which plaintiff had a contract. The attempt of the association chartered by the Committee for Industrial Organization to adopt that contract and to take advantage of its terms while it proves there was no conflict between the men and the plaintiff cannot avail. There was no assignment. Plain-

tiff did not nor was it bound to accede to such a metamorphosis."

Similar principles are announced in the other authorities cited above.

We respectfully submit that the Board acted entirely beyond its power under the circumstances disclosed in ordering the Petitioner to recognize the Oil Workers International Union (CIO) as the exclusive bargaining agency at the Refinery and in the Big Muddy Field. This situation, in addition to those pointed out in previous subdivisions of this Brief, emphasizes the impropriety of any exclusive recognition order in the absence of a current election to determine the present bargaining choice of the employees. We believe the order of the Board in this respect to be in conflict with the principles announced by the courts of the other circuits cited above. We cannot find that this court has decided this particular question. It does, however, we submit, involve a federal question of such importance as to justify this court in assuming its supervisory jurisdiction on this Petition for Writ of Certiorari.

Respectfully submitted,

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**APPENDIX***Jurisdictional Statutes*

Excerpts from Section 10 (e), National Labor Relations Act, (49 Stat. 449):

“\*\*\*\*\* The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U.S.C., title 28, secs. 346 and 347).”

Section 40, Judicial Code, as Amended, (U.S.C., Title 28, Sec. 347):

“(a) In any case, civil or criminal, in a circuit court of appeals, or in the Court of Appeals of the District of Columbia, it shall be competent for the Supreme Court of the United States, upon the petition of any party thereto, whether Government or other litigant, to require by certiorari, either before or after a judgment or decree by such lower court, that the cause be certified to the Supreme Court for determination by it with the same power and authority, and with like effect, as if the cause had been brought there by unrestricted writ of error or appeal.”



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OCT 18 1940

**CHARLES ELMORE CROPLEY**  
CLERK

No. 413

IN THE

**Supreme Court of the United States**

October Term, 1940

CONTINENTAL OIL COMPANY, a Corporation,  
*Petitioner,*

NATIONAL LABOR RELATIONS BOARD,  
*Respondent.*

**REPLY BRIEF**  
**IN SUPPORT OF PETITION FOR**  
**WRIT OF CERTIORARI**

✓ JAMES J. COSGROVE,  
Ponca City, Oklahoma

JOHN R. MORAN,  
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No. 413

IN THE

**Supreme Court of the United States**

October Term, 1940

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CONTINENTAL OIL COMPANY, a Corporation,  
*Petitioner,*

v

NATIONAL LABOR RELATIONS BOARD,  
*Respondent.*

---

**REPLY BRIEF  
IN SUPPORT OF PETITION FOR  
WRIT OF CERTIORARI**

The Petition for Writ of Certiorari presents eight questions for the Court's consideration. Appended to the Petition is the Petitioner's supporting brief.

The Respondent, National Labor Relations Board, has filed a brief in opposition. Counsel for Respondent have combined into four subdivisions in their argument the eight questions presented.

We briefly reply, directing our reply to the four subdivisions of Respondent's brief.

**Reply to Subdivision 1:**

This relates to the reinstatement orders of Jones and Moore, with back pay. Counsel for Respondent admit that there is a conflict in the decisions of the various Circuit Courts on the question presented as to whether Moore and Jones, or either of them, under the circumstances disclosed

in the record, are employees entitled to reinstatement with back pay under the provisions of the National Labor Relations Act. This admission justifies certiorari.

Counsel contended, however, that the Petitioner did not raise this question before the Board and consequently is precluded from raising it before this Court. In making this statement we submit counsel are in error, as the Petitioner did raise this question consistently from the first time it appeared in the case; that is, before the Trial Examiner of the Board, before the Board itself, before the United States Circuit Court of Appeals for the Tenth Circuit, and now before this Court. We will first refer to the examination of Ernest Jones before the Trial Examiner by counsel for the Board (R. 958-962). Jones was interrogated concerning his earnings as proprietor of his mercantile store. Continental Oil Company, through its attorney, then objected (R. 959) as follows:

"We will make a further objection, general objection, to all this line of testimony, that it is not contemplated by any law, and entirely improper to consider at all the earnings of a man who has gone in business in connection with any reinstatement claim.

"Wages and such things as that may be considered, but not any gain or loss that comes from a business. When a man goes into business, he takes business chances."

This objection was overruled by the Trial Examiner (R. 959). Jones, upon further questioning (R. 960-961) then testified that all his income, after he left the employment of Continental Oil Company, came from the operation of this general store. The attorney for the Board then made the following statement into the record (R. 961-962):

"Mr. Shaw: Mr. Examiner, the evidence shows that the earnings of the witness Jones, if any, have resulted from the operation by himself of a general store and postoffice in the town of Parkerton, Wyo.

"The witness has testified that this is his sole source of earnings. There may be the added element of cost

accounting involved in trapping. At any rate, I think that this hearing is no place for us to go into involved matters connected with cost accounting showing profits and losses in the grocery and postoffice business. The matter would be lengthy, and, I think, improper.

"I am, therefore, not at this time introducing any evidence concerning the earnings of this witness from April 27, 1936, up to the present time; and I shall ask the Board to hold such matters relating to Jones' earnings until such time as it becomes necessary to make actual restitution in the form of back wages in case the National Labor Relations Board may enter an order reinstating this man to his former position in the respondent with back pay."

Neither the Trial Examiner in his Intermediate Report nor the Board in its Order and Decision made any specific finding as to whether Moore and Jones were employees within the meaning of the Act entitled to reinstatement and reimbursement. However, both the Trial Examiner in his recommendations and the Board in its Order and Decision ordered both reinstatement and reimbursement. Exceptions were taken to these provisions of the Intermediate Report and the Order and Decision of the Board, and in both oral argument and brief before the Board in support of these exceptions we urged the impropriety of the reinstatement and reimbursement provisions.

In Section 3 of the "Conclusions" of the Intermediate Report the Trial Examiner found Continental Oil Company guilty of not only unlawfully discharging Moore and Jones but also of unlawfully refusing to re-employ them (R. 150). In its "Exceptions to Intermediate Report" (Exceptions Nos. 97, 98, R. 170, 171) exception is specifically taken to this paragraph of the Intermediate Report.

Subdivisions b and c of Paragraph 3 of the Recommendations in the Intermediate Report are directed to the reinstatement of Moore and Jones and their reimbursement for loss of pay (R. 151).



Specific exceptions to these paragraphs of the Intermediate Report are found in Paragraphs 106 and 107 of the Exceptions to the Intermediate Report (R. 172).

As shown by the Decision, Order and Direction of Election entered by the Board in this matter on May 9, 1939, which was the subject matter of the case before the United States Circuit Court of Appeals, Continental Oil Company filed a brief with the Board and presented an oral argument before the Board in support of its exceptions to the Intermediate Report (R. 39, 40). The following excerpts are taken from the brief filed with the Board from the summary of the argument presented to the Board on the various questions involving Moore and Jones. Quoting from pages 144-146:

"Third, even though Jones and Moore might otherwise be considered employees, they are excluded from that definition and from the power and jurisdiction of the Board to order their reinstatement because under Section 2, subdivision 3, of the Act an employee does not include one who has obtained any other regular and substantially equivalent employment. Moore was earning \$112.50 per month in Big Muddy. He, of course, rented his own house and paid his own board bill. The evidence shows that as guard at the state penitentiary he is getting \$70 a month, plus his room and board.

"Jones, after his employment ceased, quit the role of an employee entirely. He purchased a general merchandise store; he had himself appointed postmaster. This started within two weeks after the attempted transfer. At all times since, he has operated the store as a merchant and has acted as postmaster. Surely the Act does not contemplate that Jones has remained an employee, irrespective of the cause of his quitting the company.

"In *NLRB v. Sands Mfg. Co.*, supra (C.C.A. 6), May 13, 1938, 96 Fed. (2d) 721, 726; in *Standard Lime & Stone Co. v. NLRB*, (C.C.A. 4), June 13, 1938, 97 Fed. (2d) 531, 535, and in *Mooreville Cotton Mills v. NLRB*,

(C.C.A. 4), 94 Fed. (2d) 61, and 97 Fed. (2d) 959, (on rehearing), the Sixth and Fourth Circuit Courts of Appeal have directly held that former employees who have secured such equivalent employment elsewhere are not employees within the meaning of the Act and are not within the jurisdiction of the Board with reference to reinstatement. And, as held by the Ninth Circuit in *NLRB v. Carlisle Lumber Co.*, (Oct. 15, 1938) 99 Fed. (2d) 533, the employee must be an employee at the time of the Board's order to be considered an employee within the reinstatement and reimbursement provisions of the statute.

"As a matter of law, therefore, we submit neither Jones nor Moore is an employee of the company within the meaning of the Act, irrespective of the reason that they quit the employment of the company and consequently are not within the reinstatement or reimbursement jurisdiction of the Board.

\* \* \* \* \*

"9. With further reference to Jones and the reimbursement order recommended as to him, we call attention to the impossibility of working out any such order as well as to its impropriety. Here is a man who went into business. He did not go and seek employment elsewhere as an employee. He decided to run the financial risks incident to a proprietary business operation. How is it going to be determined what his gains or losses have been? Is the Continental to be charged with his possible poor business management which may have resulted in the loss? Is it to be charged with loss of income resulting from poor credit risks? Is it to be charged with inventory losses, depreciation, and all such items which enter into the 'Gain and Loss' column of a business enterprise? We point out these few matters as further indication that it cannot be possible that Jones can still be considered an employee of the Continental within the meaning of the Act. Moore, of course, is not an employee because, as shown by the record, he is now, and at all times since he ceased his employment

with the Continental has been, employed elsewhere at a regular and substantially equivalent employment."

In view of the above, we repeat that counsel for the Board are in error in stating on pages 7, et seq., of their brief filed herein that the question as to whether Jones and Moore were employees within the reinstatement and reimbursement provisions of the Act was not raised before the Board.

The Board admits that the question was raised in the Circuit Court and was considered and decided by that Court. Counsel for the Board rely upon a provision of Section 10 (e) of the Act which provides for reviews by the Circuit Courts of orders of the Board, which reads:

"No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the Court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances."

Obviously this provision is directed to the Circuit Court of Appeals, and not to the Supreme Court. Admittedly, the Circuit Court did consider and decide the question. The Board made no contention in the Circuit Court that this question was not properly before the Circuit Court. Neither the answer of the Board to the Petition for Review nor the Board's brief filed with the Circuit Court raises any such question. We have a situation, therefore, where the question was not only raised before the Board but was actually considered and decided by the Circuit Court after full argument both by brief and orally before the Circuit Court.

It is submitted that the granting of the writ of certiorari on the reinstatement and reimbursement orders of Jones and Moore is fully justified for reasons set forth in the petition and supporting brief, which reasons are confirmed by opposing brief.

Clearly, as pointed out in our opening brief and admitted by the Board in its brief, the applicable decisions of



the various Circuit Courts on these questions are in conflict. Not only are the decisions of the Circuit Courts in conflict but also the order requiring reimbursement is necessarily punitive and not remedial and in conflict with the applicable decisions of this Court referred to in our opening brief. Particularly as to Jones, the order of reimbursement which will necessitate reimbursing him for his business losses, if it develops that he is a poor business man or has had an unfortunate business experience in the operation of his general store, an important question of federal law is involved which should be decided by this Court if the decisions cited in our opening brief shall be thought not to directly control the question.

#### Reply to Subdivision 2:

This subdivision in the Board's brief relates to the portion of the reinstatement and reimbursement order of Moore and Jones which requires the company to pay over to governmental relief agencies sums equal to any amounts disbursed by those agencies for the employment of Jones and Moore on work relief projects. As appears from our opening brief and from the Board's brief, the decisions of the Circuit Courts on the propriety of this provision are directly in conflict. The question is now pending in this Court on certiorari in the Republic Steel Corporation case. These facts in themselves, we submit, should require the granting of certiorari in the present case. If the question is of sufficient importance to justify certiorari in the Republic Steel Corporation case so that the law may be definitely established by this Court, then that law which will be declared by this Court should be made applicable to the present case. The only answer the Board attempts to make in its brief to the application for writ of certiorari on this point is the contention that we did not raise this question in the Circuit Court. It is not contended that we did not raise it before the Board. We submit we did raise it before the Circuit Court and that the Circuit Court considered and decided it. The paragraph of the Board's order to which the objection is raised is paragraph (g), page 78 of the record. In Paragraph 64 of the Petition for Review filed by Continental Oil Company with

the Circuit Court for the Tenth Circuit (R. 17, 18), we directly attacked paragraph (g) of the Board's order. So this issue was affirmatively presented to the Circuit Court. It is true, as stated by counsel, that the point was not emphasized in the opening brief filed with the Circuit Court, but it was raised and presented at length in the petition for rehearing filed with the Circuit Court, which petition for rehearing was denied. Clearly, the Circuit Court had the issue presented to it and decided that issue in a manner which conflicts with decisions of other circuits, and decided an issue of law of which this court has assumed jurisdiction in the Republic Steel Corporation case.

### Reply to Subdivision 3:

Subdivision 3 of the Board's brief relates to Questions 6 and 7 in the petition for writ of certiorari. Question 6 in the petition involves the propriety of an order requiring an employer of 80 employees to bargain exclusively with 4 of those employees as the bargaining agency of the 80 employees because of a designation of a particular union as a bargaining agency made more than five years prior hereto, and approximately four years before the Board's order. Question 7 involves the propriety of ordering the employer of 21 employees to recognize 4 employees as the exclusive bargaining agency for the 21 based upon a similar designation five years prior hereto and four years prior to the Board's order, and involves the further question as to the power of the Board to enter such order and entirely ignore a subsequently formed union having as its members 16 out of the 21 employees, against which union no charge of company domination, or otherwise, has been made. The Board in its brief admits a conflict in the applicable decisions of the various circuits on the propriety of these orders. Furthermore, as pointed out by the Board in its brief, (p. 15), this question is now pending in this Court on certiorari in *The International Association of Machinists Case, No. 16*, this Term.

Our position is that the Board has no power as to Glenrock Refinery to order the company to bargain exclusively with 4 employees as the bargaining agency of 80 employees;

also in the Big Muddy Field the Board has no power to order the company to deal exclusively with 4 employees as the bargaining agency of 21 employees, particularly when a new union has been formed with a membership of 16 out of the 21 employees, against which new union no charge has been made. If any power exists, it was abused in this case. The orders entered certainly cannot further the purposes of the Act. The question presented is of great public importance. It is involved in conflict in the decisions of the various circuits; it is pending on certiorari in this Court. The orders are clearly punitive and not remedial and violate the decisions of this Court that the Act is remedial and not punitive. Certiorari on these points, we submit, should be granted.

#### Reply to Subdivision 4:

Subdivision 4 of counsel's brief is the Board's answer to Question 8 in the petition for writ of certiorari. This Question 8 raises the question of the identity of the International Association of Oil Field, Gas Well and Refinery Workers of America, an American Federation of Labor union, and the Oil Workers International Union, a Committee for Industrial Organization union. As pointed out in our brief in support of the petition, all dealings which Continental Oil Company had with Local 242 were with that local as a local of the International Association of Oil Field, Gas Well and Refinery Workers of America, an A F of L union. That union filed no charges. The company is not ordered to recognize that union. It is ordered to recognize no local of any union but the Oil Workers International Union, a CIO union. The 1935 designations upon which the Board in 1940 finds exclusive representative rights in Oil Workers International Union named not the Oil Workers International Union as the bargaining agency, but Local 242 of the International Association of Oil Field, Gas Well and Refinery Workers of America, an A F of L union.

Our position is that these two unions are not the same. Their constitutions and principles are diametrically opposed. It is beyond the power of the Board to order an employer to deal exclusively with a union which was never designated



as the bargaining agency by the employees. The decision of the Circuit Court in this case finding the CIO union and A F of L union to be identical clearly involves a question of law, and one that is of great public importance. It concerns not only the employer and the employees involved in the present case, but also numerous similar situations of which this Court will take judicial notice based upon the universally known contest between the A F of L and the CIO. The public importance of the question itself is sufficient to justify certiorari.

#### Conclusion

We respectfully submit that certiorari should be granted on each and all of the eight questions presented in the petition.

Respectfully submitted,

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No. 413

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**Supreme Court of the United States**

October Term, 1940

**CONTINENTAL OIL COMPANY, a Corporation,**  
*Petitioner,*

v

**NATIONAL LABOR RELATIONS BOARD,**  
*Respondent.*

**PETITIONER'S BRIEF**

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*Respondent.*

---

PETITIONER'S BRIEF

---

THE OPINIONS BELOW

The opinion of the Circuit Court of Appeals for the Tenth Circuit in this case is reported in 113 Fed. (2d) 473 (Adv. Op.). It was handed down June 13, 1940, with rehearing denied July 31, 1940, and appears in the record herein at page 497, et seq. The May 9, 1939, "Decision, Order and Direction of Election" of the National Labor Relations Board which was the subject matter of the decision before the Circuit Court of Appeals is reported in 12 NLRB, No. 87, and appears in the record herein at page 27, et seq.

JURISDICTION

The judgment of the Circuit Court of Appeals for the Tenth Circuit was entered August 19, 1940 (R. p. 538); rehearing denied July 31, 1940 (R. p. 537). The jurisdic-

tion of this Court was invoked under Section 10 (e) of the National Labor Relations Act (49 Stat. 449) and Section 240 of the Judicial Code, as amended (U.S.C., Title 28, Sec. 347), by Petition for Writ of Certiorari filed herein on September 9, 1940. On October 28, 1940, this Court entered its Order granting said Petition for Writ of Certiorari, limited to the first and second questions presented by the Petition (R. p. 542). (85 Law Edition, Adv. Op., p. 79).

### STATEMENT OF THE CASE

The judgment of the Circuit Court is for the enforcement (with exceptions not material here) of an order entered by the Respondent, National Labor Relations Board, against the Petitioner, Continental Oil Company, on May 9, 1939 (R. p. 27) in a proceeding brought under the National Labor Relations Act (49 Stat. 449).

The Petitioner was carrying on an oil-producing business in the Big Muddy Field and in the Salt Creek Field and an oil refinery business in the Town of Glenrock, all in the State of Wyoming. The proceedings involved all three of these operations. Prior to the consideration of the case by the Circuit Court Petitioner ceased operating in the Salt Creek Field and because of this the Circuit Court, by its judgment and decree, neither enforced nor set aside the Board's Order as to the Salt Creek Field (R. p. 541), thus leaving in the case before the Circuit Court only the question of the enforcement of the Board's Order as to the Big Muddy Field and the Glenrock Refinery.

The case before the Labor Board involved a consolidation of a petition for investigation and certification of representatives under Section 9 (c) of the Act as to the Salt Creek Field, with an amended complaint involving the Salt Creek Field, the Big Muddy Field, and the Glenrock Refinery, based upon charges filed by the Oil Workers International Union, and alleging unfair labor practices in violation of Section 8, subsections (1), (2), (3) and (5) of the Act. The amended complaint was filed February 25, 1938 (R. p. 83). A hearing was had before a Trial Examiner designated by the Labor Board at Casper, Wyoming, on

March 3, 1938, to March 17, 1938 (R. p. 107). On May 11, 1938, the Trial Examiner filed his Intermediate Report finding all the issues against the Petitioner (R. pp. 104 to 139).

The Board entered its "Decision, Order and Direction of Election" (hereinafter referred to as the Board's Order) on May 9, 1939.

On May 25, 1939, (R. p. 1) Petitioner filed its Petition with the United States Circuit Court of Appeals for the Tenth Circuit to review the Board's Order of May 9, 1939. On July 10, 1939, the Board filed with the Circuit Court its answer to the petition for review and its request for the enforcement of the Board's Order (R. p. 19).

Among the charges against the Petitioner contained in the complaint and amended complaint issued by the Labor Board were the following (quoting from the amended complaint, R. p. 89):

"XIX.

"The Respondent, by its officers, agents and employees, on or about April 27, 1936, while engaged as described above, did discharge Ernest Jones and D. F. Moore, employees of the Respondent, and has at all times since said date refused to reinstate said Ernest Jones and D. F. Moore.

"XX.

"The Respondent discharged and refuses to reinstate said Ernest Jones and D. F. Moore for the reason that said employees joined and assisted a labor organization known as International Oil Workers Union, and engaged in concerted activities with other employees of the Respondent for the purpose of collective bargaining and other mutual aid and protection.

"XXI.

"By its discharge of said Ernest Jones and D. F. Moore, and

(Board's Exhibit No. 10 (8))



its refusal to reinstate said employees, as above set forth, the Respondent did discriminate and is discriminating in regard to the hire and tenure of employment of said Ernest Jones and D. F. Moore, and did discourage and is discouraging membership in Oil Workers International Union, and did thereby engage in and is thereby engaging in an unfair labor practice within the meaning of Section 8, Subsection (3) of said Act."

The Labor Board, in its Order and Decision of May 9, 1939, sustained these charges (R. pp. 43 to 49) upon what the Board concluded to be conflicting evidence which it resolved in favor of the Board.

The judgment of the Circuit Court sustains the Board's Order as to Moore and Jones and requires the Petitioner to (quoting from the judgment of the Circuit Court, R. pp. 540 and 541):

"2. Take the following affirmative action which the Board finds will effectuate the policies of the Act;

\* \* \* \* \*

"(d) Offer to Ernest Jones and F. D. Moore immediate and full reinstatement to the positions formerly held by them at Big Muddy Field or positions substantially equivalent thereto at said Field, without prejudice to their seniority, insurance, or other rights and privileges;

"(e) Make whole Ernest Jones and F. D. Moore for any loss of pay or other pecuniary loss they may have suffered by reason of Continental Oil Company's acts by payment to each of them of a sum of money equal to that which he would normally have earned as wages during the period from the date of the termination of his employment to the date of Continental Oil Company's offer of reinstatement, less his net earnings during that period, deducting, however, from the amount otherwise due to each employee monies received by said employee during said period for work performed upon Federal, State, county, municipal, or other work relief

projects and pay over the amounts so deducted to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work relief projects. If an accounting shall be necessary or requested by the petitioner, Continental Oil Company, or by the said Ernest Jones or F. D. Moore in order to determine the exact amount of money due said Ernest Jones and the said F. D. Moore, or either of them, such accounting shall be had under the direction of the National Labor Relations Board, and thereupon a subsequent order shall be entered by said Board awarding the precise sum, if any, due in each instance;

“(f) Procure for F. D. Moore the restoration of insurance rights, which he lost upon the termination of his employment.”

The Petitioner in its Petition for Writ of Certiorari filed herein presented eight questions. The first five of these questions relate to the reinstatement and reimbursement of Moore and Jones. We quote these five questions from the Petition for Writ of Certiorari, together with the reasons relied upon for their allowance.

#### “Question 1

“Where an employee (Ernest Jones) is ordered transferred from one place of employment to another place of employment in violation of the National Labor Relations Act and refuses to accept such transfer and quits his employment, does the National Labor Relations Board have the power to order such employee's reinstatement to his former position where it appears that immediately after the cessation of his employment he purchased, and at all times since has operated, a general merchandise store as proprietor thereof in addition to acting as United States Postmaster? If such power in the Board exists, is it an abuse of discretion to order such reinstatement?

**"Question 2**

"Where an employee (F. D. Moore) is ordered transferred from one place of employment to another place of employment in violation of the National Labor Relations Act and refuses such transfer on account of the alleged illness of his wife, and the employer, after verifying such illness, within a day or two after the transfer order offers the employee reinstatement to his old position 'for the duration of his wife's illness,' which offer the employee refuses and thereupon quits his employment from which he was receiving a wage of \$112.50 per month (without room and board) and accepts and retains employment at the Wyoming State Penitentiary at a wage of \$70 per month, plus room and board, and it appears that at all times up to the hearing before the Trial Examiner of the Labor Board the wife's illness continued, does the Board have the power to order such employee's reinstatement, or, if such power exists, is it an abuse of discretion to order such reinstatement?

**"Question 3**

"Does the Board have the power, under the facts outlined in Question 1, to order the employer (Petitioner) to reimburse the employee (Ernest Jones) for pecuniary losses he may have sustained in the conduct of his general merchandise store, or, if such power exists, did the Board abuse its discretion in ordering such reimbursement?

**"Question 4**

"Does the Board have the power, under the facts outlined in Question 2, to order the employer (Petitioner) to reimburse the employee (F. D. Moore) for pecuniary losses he may have sustained between the date he quit his employment and the date of offer of reinstatement? In any event, should not the reimbursement be limited to a period terminating at the time when he was offered reinstatement 'for the duration of his wife's illness'?



**"Question 5**

**"The Board's Order requiring reinstatement of employees Moore and Jones, with reimbursement, provides: 'deducting, however, from the amount otherwise due to each employee monies received by said employee during said period for work performed upon Federal, State, county, municipal, or other work relief projects and pay over the amounts so deducted to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work relief projects; \* \* \*'. Even assuming the order of reinstatement and reimbursement to be proper, does the Board have the power to require the Petitioner, as employer, to comply with the above quoted portion of its reimbursement order, or, if it has such power, did it abuse its discretion in so ordering in this case?**

**"Reasons Relied on For the  
Allowance of the Writ as to Questions  
1, 2, 3, 4, and 5**

**"(a) The decision of the Circuit Court of Appeals in this case in ordering the reinstatement of Ernest Jones and F. D. Moore under the circumstances outlined in the above questions and in ordering reimbursement for pecuniary losses up to the time of the offer of reinstatement is in conflict with the decisions of other Circuit Courts of Appeal on the same matters, viz.; the Board has no power to order reinstatement and no power to order reimbursement unless the status of employee exists at the time of the entry of the Board's order and unless the employee has not, in the meantime, obtained any other regular and substantially equivalent employment.**

**"(b) In ordering the reinstatement of Ernest Jones and F. D. Moore under the circumstances outlined in the above questions and in ordering reimbursement for pecuniary losses sustained prior to offer of**

reinstatement, the Circuit Court has decided federal questions in a way probably in conflict with applicable decisions of this court which has held that the authority of the Board to require affirmative action is remedial and not punitive.

“(c) If it should be considered that the decisions of this court referred to in subdivision (b) supra are not controlling, then the Circuit Court in this case has decided important questions of federal law which have not been, but should be, settled by this court.

“(d) With further reference to the point raised in Question 5, conflicting decisions have been rendered by the various Circuit Courts and this question is now pending before this court in the case of *Republic Steel Corp. v. NLRB*, 107 Fed. (2d) 472 (3); certiorari granted 60 S. Ct. 1072.”

This Court granted the Writ of Certiorari limited to Questions 1 and 2. While the writ has been limited to Questions 1 and 2, we have also quoted Questions 3, 4 and 5 presented in the Petition for the Writ as we deem the points raised in these questions, together with the facts upon which they are based, to be pertinent and necessary to a full and proper consideration of the points raised in Questions 1 and 2.

#### Evidence

For some considerable time before May 1, 1936, Petitioner had been engaged in centralization of powers in the Big Muddy Field. At one time each well or each few wells had its own pump to pump oil therefrom, which pump was operated by power. Gradually more wells were connected to the same power, known as central powers, and this process became known as centralization of powers. It resulted in fewer powers in the field and of course with fewer powers, fewer pumpers to operate them were required. Between the first of the year, 1936, and April, 1936, the Petitioner had increased its weekly hour schedule to 48 hours in Salt Creek Field and in the Lance Creek Field,

Wyoming. It determined to put the 48-hour schedule into effect in the Big Muddy Field on May 1, 1936. There were 26 employees (exclusive of supervisory employees) then working in the Big Muddy Field. There was only a given quantity of work to do. A smaller number of men could perform this work with a 48-hour weekly schedule than with the then existing 36-hour weekly schedule. The combination of centralization of powers and increase in weekly hour schedule made it necessary to reduce the working force in the Big Muddy Field by 4 as a business proposition. The necessity for this reduction in working force was testified to by R. S. Shannon, Superintendent of the Rocky Mountain Division of Petitioner (R. pp. 304 to 308); J. C. Thomas, Petitioner's Division Superintendent (R. p. 425); R. C. Bartels, Petitioner's Field Foreman (R. p. 365); Albert D. Shipp, Union District Representative (R. p. 177); and by Ernest Jones (R. p. 177), and F. D. Moore (R. p. 283). It was the policy of the Petitioner with reference to the change to the 48-hour weekly schedule in all its fields, including Big Muddy Field, in accomplishing the necessary reduction of forces, to avoid discharging any of the employees, if possible, and to transfer them to other fields operated by the Petitioner (R. pp. 306, 366). Transfers from one field to another were common in the oil business, including the business of the Petitioner. [Respondent's Exhibits 18 (A) and 18 (B) (R. pp. 327, 494), and Respondent's Exhibit 19 (R. pp. 327, 495).]

Jones and Moore were two of the employees of Petitioner in the Big Muddy Field. In accordance with this business necessity of reducing the working force in Big Muddy Field by 4, the supervisory officials of the Petitioner selected 4 men whose employment was to be changed from the Big Muddy Field. Two of these were changed to other fields of the Petitioner in Wyoming, and Jones and Moore were transferred to the Petitioner's field in Lea County, New Mexico, known as the Hobbs Field. Jones was given notice of his transfer on April 27, 1936, to become effective May 1, 1936 (R. p. 206). Jones refused to accept the transfer and his services were terminated on May 1, 1936, or



within a day or two thereafter (R. pp. 208 to 212, 233), although he was given a check for a week's termination pay from May 1, 1936, to May 7, 1936 (R. pp. 214, 319).

On May 15, 1936, (within two weeks after his services were so terminated) Jones purchased a general store, including a grocery and meat store, in Parkerton, Wyoming, which is a town on the edge of the Big Muddy Field, which store he has been operating ever since. In addition to that, he was appointed United States Postmaster at Parkerton, as successor to his mother. Both Jones and his wife worked continuously, or practically continuously, in the store after he purchased it, and his wife took charge of the postoffice work, although Jones himself was the postmaster. (R. pp. 195 and 237, 238.)

Jones gave some incomplete testimony as to his earnings from the operation of his store over our objection (R. pp. 300 to 303), but finally this line of testimony was dropped, with a statement by the Board's attorney Shaw as follows:

Mr. Shaw: Mr. Examiner, the evidence shows that the earnings of the witness Jones, if any, have resulted from the operation by himself of a general store and postoffice in the town of Parkerton, Wyo.

"The witness has testified that this is his sole source of earnings. There may be the added element of cost accounting involved in trapping. At any rate, I think that this hearing is no place for us to go into involved matters connected with cost accounting, showing profits and losses in the grocery and postoffice business. The matter would be lengthy, and, I think, improper.

"I am, therefore, not at this time introducing any evidence concerning the earnings of this witness from April 27, 1936, up to the present time; and I shall ask the Board to hold such matters relating to Jones' earnings until such time as it becomes necessary to make actual restitution in the form of back wages in case, the

National Labor Relations Board may enter an order reinstating this man to his former position in the respondent with back pay."

Accordingly, no further evidence as to Jones' earnings, either gross or net, subsequent to the termination of his employment with Petitioner, was introduced.

Jones, at the time of the termination of his employment, was a relief pumper for the Petitioner in the Big Muddy Field (R. p. 195). He had worked steadily, except when he was sick or injured, for the Petitioner since 1926, and had originally gone to work for the Petitioner in September, 1924 (R. p. 195). He had worked for Petitioner in the Salt Creek Field and the Big Muddy Field in Wyoming and in the Walden Field in Colorado (R. p. 196). His work varied, part of the time firing boilers or as a roughneck or helper on the drilling rig (R. pp. 196-198); building and tearing down tanks; and other jobs until 1929, when he became a well pumper, and he performed this work until 1935, when he became a relief pumper until his employment was terminated (R. p. 198).

Jones was earning \$117.50 per month as a relief pumper at the time his services were terminated. Between that time and the spring of 1938 when the hearing was had before the Trial Examiner the wage for this job in the Big Muddy Field had been increased first to \$130 per month, and then to \$140 per month (R. p. 227). Jones' wage, if he had accepted his transfer to Hobbs, New Mexico, as a roustabout would have been \$120 per month at that time (Respondent's Exhibit No. 14 (N), R. p. 482), with no evidence as to the roustabout pay in the Hobbs Field at the time of the hearing.

Moore had been employed by the Petitioner, or its predecessor, in the Big Muddy Field since 1919. He had performed a variety of jobs and had been a roustabout, a gang pusher, tool dresser, had cleaned out wells, was well-driller for a short time, was rotary drill helper, and was a roustabout in April, 1936 (R. pp. 263 to 267). He was notified by the Field Foreman of his transfer to the Hobbs,

New Mexico, Field on April 26 or 27, 1936 (R. pp. 266-271). He refused to accept the transfer upon the ground that his wife was ill and could not be moved (R. pp. 269, 276, 397, 487, 437, 491). Moore was 54 years old at that time (R. p. 272). Moore testified he was told that his job in the Hobbs Field would be as a dresser of tools (R. p. 272). The Petitioner investigated and verified Moore's claim as to his wife's illness and within seven or eight days after the original notice of transfer told Moore that he was transferred to the nearby Fort Collins, Colorado, Field instead of to Hobbs, New Mexico (R. pp. 277 and 317). Moore likewise refused the transfer to the Fort Collins Field (R. pp. 270, 277). Moore was then told that the transfers either to the Hobbs Field or the Fort Collins Field had been revoked on account of his wife's illness, and that he could go back to work in the Big Muddy Field (R. p. 278). Moore testified that the Field Foreman said he could go back to work in the Big Muddy Field "for the duration of my wife's illness." (R. p. 278) This statement was denied by the Field Foreman, but the Board resolved this conflict in favor of Moore's testimony (R. p. 45). Moore refused to return to work in the Big Muddy Field, as testified by him, for the duration of his wife's illness, and did not thereafter report for work (R. pp. 271, 285 and 293). Moore testified that his wife had never regained her health and was still ill at the time of the hearing before the Trial Examiner in the spring of 1938 (R. pp. 278, 279). Moore at that time was earning \$112.50 per month as roustabout in the Big Muddy Field. He rented a house and garage for which he paid \$18 per month, and then paid his other living expenses also out of his wage (R. p. 280). On the first day of June, 1936, he took a job as guard at the state penitentiary at Rawlins, Wyoming, which he still held at the time of the hearing. For this job he was being paid \$70 per month, plus his room and board (R. p. 280). Moore's wage in the Hobbs, New Mexico, Field, if he had accepted the transfer, would have been \$145.60 per month (R. pp. 276, 317).

After Moore terminated his employment he, like Jones, received a termination check of \$25 or \$26.50 (R. p. 271).



Both Moore and Jones were active members of the local union, both being members of the Workmen's Committee of that Union, and Jones being Secretary of the Union.

As above stated, among the charges against Continental Oil Company were charges that it had, for union reasons, in violation of the Act, discharged Jones and Moore and refused to reinstate them. The record contains several hundred pages of evidence relating to the issues involving these charges concerning Moore and Jones. The Board found (R. p. 49), and the Circuit Court affirmed that the Petitioner by the transfers of Moore and Jones had discriminated against them for union reasons. While still protesting that such finding was not sustained by any substantial evidence, we are limiting our references to such portions of this evidence as seem properly to have a bearing upon the specific questions over which this Court has in this case assumed jurisdiction.

#### SPECIFICATION OF ASSIGNED ERRORS INTENDED TO BE URGED

The Circuit Court of Appeals erred:

1. In ordering the reinstatement of Ernest Jones.
2. In ordering the reinstatement of F. D. Moore.
3. In ordering the Petitioner to reimburse Ernest Jones for pecuniary losses he may have sustained in the conduct of his general merchandise store.
4. In ordering the Petitioner to reimburse F. D. Moore for pecuniary losses he may have sustained, and in any event not limiting such reimbursement to a period terminating at the time he was offered reinstatement "for the duration of his wife's illness."
5. In ordering the Petitioner to deduct from the reimbursement payments directed to be made to Moore and Jones moneys received by them for work performed upon federal, state, county, municipal or other work relief projects and to pay over the amounts so deducted to the appropriate fiscal agency of the federal, state, county, municipal or other gov-

ernment or governments which supplied the funds for said work relief projects.

While this Court has limited its order granting certiorari to Questions Nos. 1 and 2 contained in the Petition for Writ of Certiorari and quoted above herein (pp. 5, 6), which questions are covered by the assigned errors Nos. 1 and 2 above, it would seem that assigned errors Nos. 3, 4 and 5 above properly and necessarily have a bearing upon and are corollary to the matters to be considered in connection with the propriety of the orders requiring the reinstatement of Jones and Moore.

### ARGUMENT

**The Findings of the Board, Sustained by the Circuit Court, Do Not Support the Charges in the Complaint of Unlawful Discharge of Jones and Moore.**

The charge against the Petitioner in Paragraph XIX of the amended complaint quoted at page 3 supra is that the Petitioner discharged Jones and Moore and refused to reinstate them in violation of the Act. The evidence fails to show any discharge but affirmatively shows there was no discharge. The Petitioner ordered Jones and Moore transferred from one field to another. These transfers Jones and Moore refused to accept and thereby terminated their employment. The Board has made no finding of any discharge, lawful or unlawful, but has found the transfers as above outlined; and that the Petitioner was guilty of discrimination, for union reasons, in ordering the transfers of these two employees (R. p. 49).

Our first contention is that there is an absolute variance between the charge in the complaint and the evidence and the findings. The findings do not support any charge in the amended complaint. This being so, then irrespective of whether or not the findings are sustained by substantial evidence, they cannot form the basis of relief. The Petitioner has been charged with one offense. It has not been found guilty of that offense, but has been found guilty of an offense of which it was not charged, and relief has been based upon that finding. We submit that to base the affirmative

relief of reinstatement upon such a finding not covered by any charge or allegation in the complaint is improper.

We will now proceed to a discussion of the separate reinstatement orders applicable to Jones and Moore, respectively. Question No. 1 presented in the Petition for Writ of Certiorari and set forth above (page 5 supra) relates to Jones and is as follows:

**"Question 1**

**"Where an employee (Ernest Jones) is ordered transferred from one place of employment to another place of employment in violation of the National Labor Relations Act and refuses to accept such transfer and quits his employment, does the National Labor Relations Board have the power to order such employee's reinstatement to his former position where it appears that immediately after the cessation of his employment he purchased, and at all times since has operated, a general merchandise store as proprietor thereof in addition to acting as United States postmaster? If such power in the Board exists, is it an abuse of discretion to order such reinstatement?"**

The facts upon which the above question is based are disclosed by the record references hereinabove made.

Assuming that the finding that the Petitioner was guilty of discrimination in violation of the Act in the transfer of Jones and assuming, arguendo, that the charges in the complaint against the Petitioner issued by the Labor Board justified such a finding and any relief based thereon, we further now contend that in view of the particular facts in this case the Board was without power to order Jones' reinstatement to his former position, and, further, if any such power in the Board exists, it abused its discretion in ordering such reinstatement.

As shown by the evidence and the Board's findings, practically immediately after his employment was terminated Jones purchased and at all times since has been the



operator of a general merchandise store. He was also appointed United States postmaster, the office of which was in the store. His wife did most of the clerical postoffice work while he, with the assistance of his wife, conducted the business of the store. Notwithstanding these facts, the Board has not only ordered the Petitioner to offer Jones reinstatement to his former position but also to reimburse him for his earnings loss up to the time of such offer, and has even incorporated in its order (and likewise as to Moore) the clause condemned by this Court on November 12, 1940, in Case No. 14, *Republic Steel Corp. v. NLRB*, (85 L. Ed., Adv. Op., p. 1), requiring a deduction of moneys received for work performed upon relief projects and the payment of such deducted moneys to the appropriate fiscal relief agencies.

We assume that the reinstatement order of the Board is based upon Section 10 (c) of the National Labor Relations Act (herein sometimes referred to as the Act), 49 Stat. 449, which provides, in part, that the Board shall have power, where it finds an unfair labor practice, to issue an order requiring the employer "to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act."

Section 2 (3) of the Act defines an employee as follows:

"The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse."

It will be noted that under Section 10 (c) quoted above the reinstatement power of the Board is limited to "employees." It is our position that when Jones purchased and became the operator and proprietor of a general merchandise store, he necessarily thereby ceased to be an employee entitled to reinstatement within the purport of the Act; that the Act, properly construed, does not empower the Board to order reinstatement of such a former employee, and that if power in the Board exists under the language of the Act to order such reinstatement it was an abuse of discretion so to do under the circumstances existing in this case; and, lastly, if the Act shall be construed as vesting power in the Board to order Jones' reinstatement, with or without reimbursement, it is unconstitutional, in that it deprives this Petitioner of its liberty and property without due process of law and takes the private property of this Petitioner for public use without just compensation in violation of the Fifth Amendment to the Federal Constitution. ✓

In construing the reinstatement powers of the Board contained in Section 10 (c) with the definition of an employee contained in Section 2 (3) the Circuit Courts of Appeal for the Second, Third, Fourth and Ninth Circuits have held that the Board has no power to order reinstatement unless the status of an employee exists at the time of the entry of the Board's order, and unless the employee has not, in the meantime, obtained any other regular and substantially equivalent employment.

*Mooreville Cotton Mills v. NLRB* (4th), 94 F. (2d) 61, 66.

*Standard Lime & Stone Co. v. NLRB* (4th), 97 F. (2d) 531, 535.

*NLRB v. Carlisle Lumber Co.* (9th), 99 F. (2d) 533, 537, 538.

*NLRB v. Hearst* (9th), 102 Fed. (2d) 658, 664.

*NLRB v. National Motor Bearing Co.* (9th), 105 F. (2d) 652, 662.

*NLRB v. Botany Worsted Mills* (3rd), 106 F. (2d) 263, 269.

*Phelps Dodge Corp. v. NLRB* (2d), 113 Fed. (2d) 202 (Adv. Op.) Pending on petition for certiorari No. 387, this Term.

Typical of the reasoning in the above cases is the following quotation from *NLRB v. Carlisle Lumber Co.* (9th), 99 Fed. (2d) 533, 537:

"It should be noted that only 'employees' may be reinstated. Section 2 (3) of the act, 29 USCA sec. 152 (3), defines 'employee' to include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment.' Respondent makes several contentions regarding the time when the men are to be considered as employees. I think that since the act provides that the Board may 'order \* \* \* \* reinstatement of employees with or without back pay' before it could make such an order it would first have to determine whether or not the men were 'employees' at the time of its order. If the men were not 'employees' the Board would have no power to order their reinstatement. Therefore, the Board must determine when it makes its order, whether or not the men are 'employees' at such time. The Board made a like construction of the act by its finding that the men in question had not obtained substantially equivalent employment on September 26, 1936, the date of its first order, partially enforced by our former decision.

"If any of the men did obtain such employment the 'employee' status, as respondent contends, could not be revived by their voluntarily or involuntarily ceasing such employment."

In the present case the Board made no finding that Jones had not obtained substantially equivalent employ-



ment, which finding, we submit, is a condition precedent to any reinstatement order. Clearly, one who becomes a proprietor of a merchandise store does not retain his status as an employee of anyone.

Again this Court has held that the power of the Board to require affirmative action is remedial and not punitive. We quote Mr. Chief Justice Hughes in the following cases:

*Consolidated Edison Co. v. NLRB*, 305 U. S. 197, 59 S. Ct. 206, 83 L. Ed. 126, 143.

"The power to command affirmative action is remedial, not punitive, and is to be exercised in aid of the Board's authority to restrain violations and as a means of removing or avoiding the consequences of violation where those consequences are of a kind to thwart the purpose of the Act. The continued existence of a company union established by unfair labor practices or of a union dominated by the employer is a consequence of violation of the Act whose continuance thwarts the purposes of the Act and renders ineffective any order restraining the unfair practices."

*NLRB v. Fansteel Metal Corp.*, 306 U. S. 240, 59 S. Ct. 490, 83 L. Ed. 627, 636:

"The authority to require affirmative action to 'effectuate the policies' of the Act is broad but it is not unlimited. It has the essential limitations which inhere in the very policies of the Act which the Board invokes. Thus in *Consolidated Edison Co. v. National Labor Relations Bd.* (decided December 5, 1938) 305 U. S. 197, ante, 126, 59 S. Ct. 206, we held that the authority to order affirmative action did not go so far as to confer a punitive jurisdiction enabling the Board to inflict upon the employer any penalty it may choose because he is engaged in unfair labor practices, even though the Board is of the opinion that the policies of the Act may be effectuated by such an order. We held that the power to command affirmative action is remedial, not punitive, and is to be exercised in aid of the Board's

authority to restrain violations and as a means of removing or avoiding the consequences of violation where those consequences are of a kind to thwart the purposes of the Act."

In its recent opinion on this question, in *Republic Steel Corp. v. NLRB*, Case No. 14, this term, this Court again said:

"This language should be construed in harmony with the spirit and remedial purposes of the Act. We do not think that Congress intended to vest in the Board a virtually unlimited discretion to devise punitive measures, and thus to prescribe penalties or fines which the Board may think would effectuate the policies of the Act. We have said that 'this authority to order affirmative action does not go so far as to confer a punitive jurisdiction enabling the Board to inflict upon the employer any penalty it may choose because he is engaged in unfair labor practices even though the Board be of the opinion that the policies of the Act might be effectuated by such an order.' We have said that the power to command affirmative action is remedial, not punitive."

While the courts have held that an employee discharged in connection with unfair labor practice upon the part of the employee does not thereby lose his status as an employee, it has never been held to our knowledge that if the employee thereafter voluntarily ceases to be an employee of his former employer by notice to that effect given, or ceases to be an employee of anyone by embarking upon a business venture of his own under which he becomes a proprietor of a business himself and, as such, an employer, he still retains his status as an employee. A person who is not an employee of anyone because he has voluntarily put himself out of the employee class, certainly cannot on any theory still be considered an employee of the former employer. The danger of a construction of the Act which would empower the Board to order Jones' reinstatement under the facts disclosed by the record is evidenced and emphasized by the further order

of the Board that in connection with the reinstatement Jones should be reimbursed for his earnings loss up until the time offer of reinstatement is made. While it may be proper, to effectuate the purposes of the Act, to require an employer to make a discharged employee whole for any loss resulting from the wrongful discharge, it certainly cannot be proper to require an employer to subsidize a business venture and protect a former employee against the losses in the business venture in which he has voluntarily engaged. The Board's power is only to take such affirmative action as will effectuate the policies of the Act. It does include reinstatement of employees under appropriate circumstances but they must be employees of some class, and not employers or proprietors of mercantile institutions. Any reinstatement power only exists when it will effectuate the policies of the Act. If it will not effectuate the policies of the Act, the power does not exist. As held time and again by this Court, the Act is remedial and not punitive.

We submit the Act should not be construed as vesting any power in the Board to order Jones' reinstatement. To so construe it, whether or not the reinstatement be accompanied with reimbursement, will deprive this Petitioner of its liberty and property without due process and take its property for a public use without just compensation in violation of the Fifth Amendment. Finally, if, upon any theory, the Act can properly and constitutionally be considered to vest basic power in the Board to order Jones' reinstatement, we submit that the action taken by the Board is punitive and not remedial, was an abuse of discretionary power and cannot possibly effectuate the purposes of the Act. For all these reasons we submit that the judgment of the Circuit Court, in so far as it orders Jones' reinstatement, should be reversed.

Question No. 2 presented in the Petition for Writ of Certiorari and set forth above (page 6 supra) relates to Moore, and is as follows:



**"Question 2**

1 "Where an employee (F. D. Moore) is ordered transferred from one place of employment to another place of employment in violation of the National Labor Relations Act and refuses such transfer on account of the alleged illness of his wife, and the employer, after verifying such illness, within a day or two after the transfer order offers the employee reinstatement to his old position 'for the duration of his wife's illness,' which offer the employee refuses and thereupon quits his employment from which he was receiving a wage of \$112.50 per month (without room and board) and accepts and retains employment at the Wyoming State Penitentiary at a wage of \$70 per month, plus room and board, and it appears that at all times up to the hearing before the Trial Examiner of the Labor Board the wife's illness continued, does the Board have the power to order such employee's reinstatement, or, if such power exists, is it an abuse of discretion to order such reinstatement?"

The facts upon which the above question is based are likewise disclosed by the record references hereinabove made.

The record is clear that Moore refused to accept the transfer to the Hobbs, New Mexico, Field, and gave his wife's illness as the reason. This claim of illness being verified, the order of transfer to the Hobbs Field was immediately revoked and Moore was ordered transferred to the Fort Collins, Colorado, Field. He likewise refused this transfer. This order was thereupon immediately withdrawn and Moore was told he could go back to work in the Big Muddy Field. This all happened in about a week after the original order of transfer and within the period covered by his retirement check payment. Moore testified that the Field Foreman stated he could go back to work in the Big Muddy Field "for the duration of my wife's illness." While the Field Foreman denied this statement, the Board resolved this conflict in favor of Moore. Moore testified that he still refused to go back to work in the Big Muddy Field for the

duration of his wife's illness and shortly thereafter secured a position as guard at the Wyoming state penitentiary, Rawlins, Wyoming, which job he still held at the time of the hearing. His wife was still ill at that time and her illness was of indefinite duration. Moore worked as a roustabout in the Big Muddy Field at \$112.50 per month wage. Out of this he paid \$18 per month rent for house and garage and his other living expenses. His wage at the penitentiary was \$70 per month, plus his room and board. If he had accepted his transfer to the Hobbs Field, he would have worked as a tool dresser at a wage of \$145.60 per month. Record references to the above facts are set forth in the "Statement of the Case" supra.

The Board found that Moore was justified in quitting and was not required to accept reinstatement of his job in the Big Muddy Field on the temporary basis of the period of his wife's illness (R. p. 48).

As we pointed out above with reference to Jones, the complaint issued by the Labor Board against the Petitioner alleged a discriminatory discharge of Moore. The evidence shows a transfer but no discharge. There is no finding of any discharge, but there is a finding of a discriminatory transfer. For the same reasons pointed out above with reference to Jones, we submit such a finding, not in conformity with any charge in the complaint, is not sufficient to justify any reinstatement relief.

Even assuming arguendo, that the findings of the Board are within the issues presented by the complaint, it clearly appears that forthwith after the transfer order was given it was revoked, and Moore was told that he could continue to work at his old job in the Big Muddy Field. This constituted reinstatement. The fact, as found by the Board, that such revocation of the transfer order and such reinstatement were coupled with a limitation of employment for the duration of the illness of Moore's wife is immaterial. That illness, as Moore testified, was of a character to indicate indefinite duration and was still continuing at the time of the hearing, some two years after the transfer. This is not a case where reinstatement is coupled with demotion or

other change in the former working conditions. Moore indicated by his testimony (R. p. 279) that what he expected was an assurance of a lifetime job. There was no duty upon his employer to give any such assurance. It is apparent that Moore voluntarily quit his employment because he was not willing, as he testified, to go back to work at his old job for the indefinite period of his wife's illness. There was no discharge. There was no transfer because the transfer order was revoked. There is nothing upon which a reinstatement order can be based. The most that can possibly be said is that there was a threat upon the part of the Petitioner, through its Field Foreman, to discharge Moore at a future date when his wife's illness should have ended. Any violation of the Act in this respect could not have occurred until the discharge should actually be made in the future. Certainly any earnings loss which Moore may have sustained is the result of his own voluntary act in quitting his employment even though his further employment was only for the duration of his wife's illness. The purpose of the law is to protect the employee from earnings loss resulting from unlawful acts of the employer and not from the voluntary acts of the employee.

Even with further employment limited to the duration of his wife's illness, such a limitation, we submit, does not constitute any unfair labor practice or any violation of the Act. It has no relation to a discriminatory discharge or a discriminatory refusal to employ or reinstate.

For these various reasons, we submit that as a matter of law under the facts disclosed by this record Moore voluntarily quit his employment and the Board committed error, affirmed by the Circuit Court, in ordering his reinstatement, either with or without reimbursement.

Finally, even assuming, *arguendo*, that Moore's reinstatement, coupled with a limitation that it was for the period of his wife's illness, constituted in law a discharge, this would not entitle Moore to further reinstatement now unless Moore was still an employee, within the definition of that word as used in the Act, at the time of the entry of the Board's order. The order was not entered until May 9,



1939. What his status was at that time is not disclosed by the record. At the time of the hearing before the Trial Examiner of the Labor Board in March, 1938, he was still employed at the state penitentiary.

In connection with the reinstatement order involving Jones we have, on page 17, et seq., supra, cited the uniform decisions of the courts of the various circuits holding that the status of employee must exist at the time of the entry of the Board's order. These authorities are equally applicable to Moore. Even though Moore was discharged as the result of a labor dispute or because of an unfair labor practice, he ceased to be an employee if he had obtained any other regular and substantially equivalent employment. This is within the definition of "employee" under Section 2 (3) of the Act supra. Moore was earning \$112.50 per month in the Big Muddy Field. Out of this he paid \$18 per month rent and his other living expenses. If he had accepted his transfer to Hobbs, New Mexico, he would have received \$145.60 per month. There is evidence in the record (R. p. 299) that subsequent to the time Moore left the Big Muddy Field the roustabout wage was increased several times to a total of \$135 per month at the time of the hearing.

We submit that Moore's employment at the penitentiary was regular and an employment substantially equivalent to his Big Muddy Field employment, and, being so, Moore, upon any theory, could not be considered an employee within the reinstatement provisions of the Act. As stated by the Ninth Circuit in *NLRB v. Carlisle Lumber Co.*, 99 Fed. (2d) 533, 537 (p. 18 supra):

"If the men were not 'employees' the Board would have no power to order their reinstatement. Therefore, the Board must determine when it makes its order, whether or not the men are 'employees' at such time."

The Board made no such determination as to either Moore or Jones; in other words, there is no finding in this case that either Moore or Jones had not obtained other regular or substantially equivalent employment. Without such a finding, the Board is without power to order reinstatement

of either Moore or Jones, even assuming that other elements justifying reinstatement are present.

In conclusion, we submit, both as to Moore and Jones, that the Board was without power, under the Act, to order their reinstatement. If, however, basic power in the Board existed to order such reinstatement, it was a gross abuse of discretion to exercise that power under the facts of this case. The action of the Board in any event is punitive and not remedial, and is not in furtherance of the purposes of the Act.

As to both Jones and Moore, the judgment of the Circuit Court ordering their reinstatement should be reversed.

Respectfully submitted,

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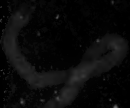
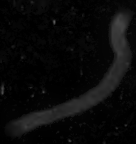
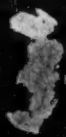
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**In the Supreme Court of the United States**

OCTOBER TERM, 1940

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No. 413

CONTINENTAL OIL COMPANY, A CORPORATION,  
PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

---

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED  
STATES CIRCUIT COURT OF APPEALS FOR THE TENTH  
CIRCUIT

---

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD  
IN OPPOSITION

---

OPINIONS BELOW

The opinion of the court below (R. 1649-1668) is reported in 113 F. (2d) 473. The findings of fact, conclusions of law, order, and direction of election of the National Labor Relations Board (R. 36-79) are reported in 12 N. L. R. B. 789.

JURISDICTION

The judgment of the court below (R. 1696-1699) was entered on August 19, 1940. A petition for rehearing (R. 1669-1693) was denied on July 31, 1940 (R. 1695). The petition for a writ of certiorari

was filed on September 9, 1940. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and Section 10 (e) and (f) of the National Labor Relations Act.

#### QUESTIONS PRESENTED

As explained in the Argument, *infra*, pp. 6-12, we do not think the following Questions 1 and 2 are properly presented in this case. We agree that Questions 3 and 4 are presented.

1. Whether in the circumstances of this case it was permissible for the Board to order petitioner to reinstate with back pay two discharged employees.

2. Whether the Board may require that an employer pay over to governmental relief agencies sums equal to any amounts disbursed by those agencies for the employment on work relief projects of employees discharged by the employer in violation of the Act.

3. Whether it was permissible for the Board, upon findings that petitioner had refused to bargain collectively with a labor organization designated by a majority of the employees in each of two appropriate units, to require petitioner to bargain with that labor organization as the exclusive representative of the employees in each unit, although the organization may have lost its majorities by the time of the hearing.



4. Whether there was substantial evidence supporting the Board's findings that the labor organization with which petitioner had refused to bargain collectively was the same organization, with only a change in name, as that with which the Board's order required the employer to bargain.

#### STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C., Sec. 151, *et seq.*) are set forth in the Appendix, *infra*, pp. 20-21.

#### STATEMENTS

Upon the usual procedural steps, as to none of which is any question raised,<sup>1</sup> the Board, on May 9, 1939, issued its findings of fact, conclusions of law, order, and direction of election (R. 36-79). In brief outline, and omitting jurisdictional facts, the Board found:<sup>2</sup>

<sup>1</sup> These, pursuant to Sections 9 and 10 of the National Labor Relations Act, were: charges (R. 92-95), complaint (R. 86-91), amended complaint (R. 96-104), answer (R. 105-116), petition for investigation and certification of representatives (R. 95-96), order directing investigation and consolidating proceedings (R. 105), hearing before a trial examiner, amendment to complaint (R. 116), answer thereto (R. 116-118), intermediate report of the trial examiner (R. 118-152), exceptions thereto (R. 152-180), oral argument (R. 185), and the filing of a brief before the Board.

<sup>2</sup> In addition to the findings summarized, the Board found that petitioner had engaged in certain unfair labor practices in its Salt Creek Field (R. 68-70). Subsequently petitioner

Shortly after the passage of the Act, International Association of Oil Field, Gas Well and Refinery Workers of America, a labor organization herein called the Union, was designated as collective-bargaining representative by a majority of the employees in an appropriate unit at petitioner's Big Muddy Field (R. 42-43), and by a majority of the employees in another appropriate unit at petitioner's Glenrock Refinery (R. 57-58).<sup>2</sup> At various times between August 1935 and May 1936 at Big Muddy, and between August 1935 and March 1936 at Glenrock, the Union met with petitioner in efforts to bargain collectively, but petitioner steadfastly refused to recognize the Union as exclusive bargaining representative of the employees in either unit, or to make *bona fide* efforts to arrive at a collective agreement at either place (R. 43-51, 58-61). The Board accordingly found that in August 1935 and thereafter, petitioner, in violation

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ceased operating in the Salt Creek Field, and for that reason the court below neither enforced nor set aside the Board's order as to that field (R. 1699).

Since the petition does not contest any of the findings of unfair labor practices, we do not detail the evidentiary findings or supporting evidence.

<sup>2</sup> The Board found (R. 41, 43) that in June 1937, the name of International Association of Oil Field, Gas Well and Refinery Workers of America was changed to Oil Workers International Union, but that there was no change in the identity of the labor organization. The validity of the latter finding, which is attacked by petitioner, is discussed *infra*, pp. 17-19. As used herein, the term Union refers to the labor organization under both its names.

of Section 8 (1) and (5) of the Act, refused to bargain collectively with the Union either at Big Muddy (R. 50-51) or at Glenrock (R. 61).

In April 1936 petitioner discriminatorily transferred Ernest Jones and F. D. Moore from Big Muddy because of their membership and activities in the Union. Jones refused to accept the transfer and was discharged. Moore pointed out that his wife was bedridden, whereupon petitioner offered to retain him at Big Muddy for the duration of his wife's illness; when Moore refused to accept employment on this basis, he, too, was discharged (R. 51-56). The Board concluded that petitioner had thereby violated Section 8 (1) and (3) of the Act (R. 56).

At Glenrock petitioner participated in the formation of a labor organization, the Employees Council Plan, in 1934, and supported, interfered with, and dominated it until the Act was upheld by this Court in April 1937; at that time petitioner caused the Plan to be replaced by the Independent Association of Conoco Glenrock Refinery Employees, herein called the Glenrock Association. The Board found that the Glenrock Association was merely a continuation of the Plan, and that petitioner dominated and interfered with the formation and administration of the Glenrock Association, contrary to Section 8 (1) and (2) of the Act (R. 61-65).



The Board's order required petitioner to cease and desist from its unfair labor practices; to bargain collectively with the Union at Big Muddy and at Glenrock; to offer reinstatement with back pay to Jones and Moore and procure the restoration of certain insurance rights to Moore; to pay over to governmental relief agencies sums equal to any amounts disbursed by those agencies for the employment of Jones and Moore on work-relief projects; to withdraw recognition from and disestablish the Glenrock Association; and to post appropriate notices (R. 76-79).

Petitioner filed a petition in the court below to review and set aside the Board's order (R. 1-20). The Board answered, requesting enforcement of its order (R. 20-27). On June 13, 1940, the court handed down its opinion and entered a short form judgment enforcing the Board's order (R. 1649-1668).<sup>4</sup> A petition for rehearing filed by petitioner (R. 1669-1693) was denied on July 31, 1940 (R. 1695). On August 19, 1940, the court vacated its short form judgment and substituted a long form judgment to the same effect (R. 1696-1699).

#### ARGUMENT

1. Petitioner challenges the order of the Board reinstating Jones and Moore with back pay, upon

<sup>4</sup> In addition to the provisions summarized above, the Board's order also contained certain provisions as to the Salt Creek Field. As explained in note 2, *supra*, p. 3, these provisions were neither enforced nor set aside by the Court.

the ground that subsequent to their discharge both men lost their status as "employees" (Pet. 12, 19-27). This contention was not urged before the Board, although petitioner filed voluminous exceptions (R. 152-180) to the examiner's intermediate report, which recommended reinstatement with back pay (R. 151). Hence the contention was not properly before the court below. See Section 10 (e) of the Act; *National Labor Relations Board v. Sunshine Mining Co.*, 110 F. (2d) 780, 790 (C. C. A. 9th, pending on the employer's petition for certiorari, No. 352, this Term); *National Labor Relations Board v. National Motor Bearing Co.*, 105 F. (2d) 652, 662 (C. C. A. 9th). While the court below did consider the question (R. 1666), petitioner's failure to raise it before the Board would preclude its consideration in this Court.

Further, the assertion that Jones and Moore lost their status as "employees" is devoid of merit. In the case of Jones, it is predicated on the fact that he purchased a store (R. 57; 343, 393); petitioner argues that a storekeeper "enters the class of an employer" (Pet. 22) and "does not retain his status as an employee" (Pet. 21). But the Act is not concerned with popular conceptions of employee or employer classes. A person may simultaneously be an employee within the meaning and for the purposes of the Act and an employer in another and more general sense. In the case of Moore, petitioner's assertion is predicated on the

fact that he became a guard at the state penitentiary in Rawlins, Wyoming, at a salary of \$70 a month with room and board (R. 57; 421, 430, 432-433, 440). Petitioner argues (Pet. 23-24) that this employment is substantially equivalent to Moore's employment with petitioner as an oil field roustabout at \$112.50 a month (R. 57; 439, 1625, 1631, 1643).<sup>5</sup> But Moore's employment at a smaller wage, in an unrelated occupation, and in a different city, is not, as a matter of law, substantially equivalent to his employment with petitioner. See *Phelps Dodge Corp. v. National Labor Relations Board*, 113 F. (2d) 202 (C. C. A. 2d, pending on the employer's petition for certiorari, No. 387, this Term); *National Labor Relations Board v. Botany Worsted Mills*, 106 F. (2d) 263 (C. C. A. 3d); *Subin v. National Labor Relations Board*, 112 F. (2d) 326 (C. C. A. 3d); *Mooreville Cotton Mills v. National Labor Relations Board*, 110 F. (2d) 179, 97 F. (2d) 959 (C. C. A. 4th); *Hartsell Mills Corp. v. National Labor Relations Board*, 111 F. (2d) 291 (C. C. A. 4th); *National Labor Relations Board v. Carlisle Lumber Co.*, 99 F. (2d) 533 (C. C. A. 9th), certiorari denied, 306 U. S. 646.<sup>6</sup>

<sup>5</sup> The rate of pay for roustabouts was increased after Moore's discharge to \$125 and subsequently to \$135 a month (R. 57; 458-459), a fact bearing on the equivalence of the new employment to the old. Cf. *Mooreville Cotton Mills v. National Labor Relations Board*, 110 F. (2d) 179, 182 (C. C. A. 4th).

<sup>6</sup> While the Board made no specific finding as to the equivalence of the two employments, its findings concerning the



The court below, however, did not rest its enforcement of the reinstatement order upon the ground that the two men had not obtained other regular and equivalent employment, but upon the broader principle that a person discriminatorily discharged "has a legally protected tenure intermediate his discharge or discrimination and his reinstatement. The act creates a legal right in the employee, and it authorizes the Board as a remedial measure to order reinstatement with back pay" (R. 1666). Insofar as the decision below thus holds that subsequent employment is immaterial and does not deprive the Board of power to reinstate an unlawfully discharged employee, it is in conflict with decisions of other circuit courts of appeals cited by petitioner (Pet. 20) and with *Phelps Dodge Corp v. National Labor Relations Board*, 113 F. (2d) 202 (C. C. A. 2d, pending on the employer's petition for certiorari, No. 387, this Term) which hold that persons obtaining substantially equivalent employment lose their status

nature of Moore's subsequent employment (R. 57), taken together with its characterization of Moore as an "employee" in determining that reinstatement with back pay was an appropriate remedy (R. 72), would seem tantamount to a finding that the employments were not equivalent. (See *National Labor Relations Board v. National Motor Bearing Co.*, 105 F. (2d) 652, 662 (C. C. A. 9th); cf. *National Labor Relations Board v. Mackay Radio & Telegraph Co.*, 304 U. S. 333, 344, 349). The absence of an explicit finding probably derives from petitioner's failure to raise the issue before the Board.

as "employees" and may not be ordered reinstated. This question is one which has recurred in the administration of the Act, but inasmuch as there was no loss of employee status in this case it is not squarely presented; hence the present case is not an appropriate one for a decision of the question. Moreover, as indicated, we think that consideration of the question is foreclosed entirely by petitioner's failure to raise it before the Board.

Petitioner's further assertion that the Board improperly ordered petitioner to reimburse Jones for "pecuniary losses he may have sustained in the conduct of his general merchandise store." (Pet. 24) is plainly inaccurate. The Board did nothing of the kind; it merely ordered petitioner to make Jones whole for any loss of pay he may have suffered as a result of petitioner's discrimination (R. 78).

Petitioner's contention (Pet. 27) that the Board should not have awarded back pay to Moore because he would have sustained no loss had he accepted petitioner's offer to allow him to remain at Big Muddy for the duration of his wife's illness *supra*, p. 5) is likewise without merit; the Board was not required to penalize Moore because he rejected demotion based upon his union activities from a permanent to a temporary status. Further, the contention presents no question of general importance.

2. Petitioner asserts (Pet. 27-29) that the judgment below, in so far as it enforces the provision (R. 78) of the Board's order which requires petitioner to pay over to governmental relief agencies sums equal to any amounts disbursed by these agencies for the employment on work relief projects of Jones and Moore, is in conflict with *National Labor Relations Board v. Leviton Mfg. Co.*, 111 F. (2d) 619 (C. C. A. 2d), *M. H. Ritzwoller Co. v. National Labor Relations Board*, decision upon rehearing July 16, 1940 (C. C. A. 7th); and *National Labor Relations Board v. Tovrea Packing Co.*, 111 F. (2d) 626 (C. C. A. 9th). In the cited cases and in *National Labor Relations Board v. Waumbec Mills, Inc.*, decided August 20, 1940 (C. C. A. 1st), similar work relief agency provisions were disapproved and denied enforcement, and in *Republic Steel Corp. v. National Labor Relations Board*, No. 14, this Term, this Court granted certiorari, limited to the work relief agency question. In the present case, however, petitioner raised no question concerning the "work relief" provision when the validity of the Board's order was under consideration by the court below; indeed, its brief expressly excluded that provision from consideration.<sup>7</sup> The

<sup>7</sup> Petitioner's brief below, while attacking the reinstatement and back pay provisions of the order as beyond the power of the Board and as arbitrary, stated expressly that "certain deductions" in "Par. (g), P. 78" [i. e., the work relief provision], are "not involved here." Brief of Petitioner, No. 1902, filed November 1939, Circuit Court of Appeals for the Tenth Circuit, p. 55.



court below made no mention of the provision, even in its summary of the Board's order (R. 1650-1651). Only after the court had entered its judgment (R. 1668) did petitioner first raise the point, among numerous other contentions, in a petition for rehearing (R. 1669-1693). The order of the court denying the petition for rehearing was entered before the Board could submit an answer to it, and the order specified no ground (R. 1695). It may not be presumed that the court considered upon its merits a contention thus first raised after judgment. In these circumstances, the decision below cannot be taken as an adjudication upon the validity of the "work relief" provision or as in conflict with the cases holding such a provision invalid.\*

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\* Prior to their decisions in the *Leviton*, *Ritzwoller*, and *Tovrea* cases, the Second, Seventh, and Ninth Circuits enforced the "work relief" provision in cases where its validity was not challenged. *National Labor Relations Board v. National Casket Co.*, 107 F. (2d) 992 (C. C. A. 2d) (see 12 N. L. R. B., at 175-176); *National Labor Relations Board v. Lightner Publishing Corp.*, decided July 1, 1940 (C. C. A. 7th) (see 12 N. L. R. B., at 1264); *North Whittier Heights Citrus Association v. National Labor Relations Board*, 109 F. (2d) 76 (C. C. A. 9th), certiorari denied, No. 853, last Term (see 10 N. L. R. B., at 1297-1298). In the *National Casket* case the court said, "The validity of this provision has not been argued, and we express no opinion on the point" (107 F. (2d), at 998). See also Brief in Opposition and the Supplemental Memorandum for the Board in *J. Greenebaum Tanning Co. v. National Labor Relations Board*, pending on petition for certiorari, No. 152, this Term; Brief in Opposition in *Subin v. National Labor Relations Board*, pending on petition for certiorari, No. 280, this Term.

3. Petitioner attacks the provisions of the Board's order directing it to bargain with the Union at Glenrock and Big Muddy without "at least" holding an election, apparently on the ground that the Union had either lost its majority at the time of the hearing or that its majority had become questionable (Pet. 13-15, 29-34). There is no clear showing that the Union's majority was dissipated at either place.\* Further, the Board

\* At Glenrock, the unchallenged findings of the Board establish that the Glenrock Association was a company-dominated organization (*supra*, p. 5), so that the designation of that organization by a majority of the employees in June 1937 (R. 557, 1499), upon which petitioner relies (Pet. 13, 29), clearly did not operate to change the freely chosen representative. *National Labor Relations Board v. Bradford Dyeing Assn.*, No. 588; last Term, decided May 20, 1940. At Big Muddy, petitioner relies upon the formation of "an independent union" in June 1937 (Pet. 14, 30, 34). At that time a majority of the Big Muddy employees signed a petition purporting to found an "association" and appointing a "temporary" bargaining committee until a permanent committee should be appointed (R. 1647-1648, 1311, 1323-1324). But no permanent committee was ever appointed, the Association never held a meeting, had no name or bylaws, collected no dues, never presented grievances, or conferred with the management, and, according to its organizer, "we never did start" (R. 1323, 1313, 1322-1325). We do not believe that this abortive attempt to create a new agency can be taken as a revocation of the Union's designation as bargaining representative.

Petitioner's further reference (Pet. 13-14, 29-30) to a decline in the Union's membership at Glenrock from a total of 12 to a total of 4, and at Big Muddy from a total of 9 to a total of 4, between July or August 1935 and the date of the hearing (R. 1614), is misleading, since the Union's majority was at no time based on its actual membership, but on its

found that any defections from the Union were directly attributable to petitioner's unfair labor practices in refusing to bargain with the Union, and at Glenrock to the additional factor of petitioner's support and encouragement of the illegal Employees Council Plan and its continuation, the Glenrock Association (R. 70-71). The court below concurred in the finding, holding it a "reasonable assumption" that any diminution in union membership was caused by petitioner's unfair labor practices, that "an employer cannot discredit a duly designated bargaining agency of its employees by refusing to bargain with it and then be allowed to take advantage of a loss in membership due to its wrongful act," and that "an order requiring the employer to bargain as contemplated by the act is reasonably necessary and proper to overcome the effect of the interference with self-organization" (R. 1659, 1658, 1664).

The decision of the court below that a loss of majority following a refusal to bargain is presumably due to such refusal and may be disregarded by the Board in issuing its bargaining order, is in accord with many decisions of other Federal courts of appeals. *National Labor Relations Board v. Somerset Shoe Co.*, 111 F. (2d) 681 (C.

designation in July 1935 as bargaining representative by 46 out of 80 employees in the appropriate unit at Glenrock (R. 57; 1460-1461, 1421) and by 28 out of 35 employees in the appropriate unit at Big Muddy (R. 42-43; 1435-1436, 1602-1603).



C. A. 1st); *National Labor Relations Board v. Highland Park Mfg. Co.*, 110 F. (2d) 632 (C. C. A. 4th); *Hartsell Mills Co. v. National Labor Relations Board*, 111 F. (2d) 291 (C. C. A. 4th); *Ritzwoller Co. v. National Labor Relations Board*, decided May 8, 1940 (C. C. A. 7th); *Bussmann Mfg. Co. v. National Labor Relations Board*, 111 F. (2d) 783 (C. C. A. 8th); *International Association of Machinists v. National Labor Relations Board*, 110 F. (2d) 29 (Ct. App., D. C.); see also *National Labor Relations Board v. Remington Rand, Inc.*, 94 F. (2d) 862 (C. C. A. 2nd), certiorari denied, 304 U. S. 576; *National Labor Relations Board v. Louisville Refining Co.*, 102 F. (2d) 678 (C. C. A. 6th), certiorari denied, 308 U. S. 568; *National Labor Relations Board v. Biles-Coleman Lumber Co.*, 96 F. (2d) 197, 98 F. (2d) 18 (C. C. A. 9th). The *International Association of Machinists* case, *supra*, is pending argument in this Court on writ of certiorari granted, No. 16, this Term. We believe that for the reasons stated by the court below in its decision and which were presented to this Court in detail in the Board's brief (pp. 39-60) in *National Labor Relations Board v. Bradford Dyeing Assn.*, No. 588, last Term, decided May 20, 1940, the decision below is clearly correct.\*

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\* Petitioner is in error in asserting (Pet. 33-34) that the Board now orders elections where there has been a possible loss of majority following a refusal to bargain. The Board decisions cited deal with the entirely different situation of an original determination of a bargaining representative under section 9 when there are conflicting claims.

In two cases cited by petitioner (*National Lico-rice Company v. National Labor Relations Board*, 104 F. (2d) 655, and *National Labor Relations Board v. American Manufacturing Company*, 106 F. (2d) 61) and in a third case not cited by petitioner (*Stewart Die Casting Corp. v. National Labor Relations Board* (C. C. A. 7th) July 3, 1940), the Second and Seventh Circuits, upon representations of loss of majority, have thought it a proper exercise of their discretion to condition enforcement of a bargaining order upon proof of majority in an election.<sup>10</sup> For the reasons stated above, we think that these decisions are unsound, but they are not clearly in conflict with the decision below. Each case represents an application of a supposed discretionary authority and hence, in the view of

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<sup>10</sup> Petitioner also cites (Pet. 31) *National Labor Relations Board v. Bradford Dyeing Ass'n.*, 106 F. (2d) 119 (C. C. A. 1st); *National Labor Relations Board v. Fansteel Metallurgical Corp.*, 306 U. S. 240; *Cupples Co. v. National Labor Relations Board*, 106 F. (2d) 100; and *Hamilton Brown Shoe Co. v. National Labor Relations Board*, 104 F. (2d) 49 (C. C. A. 8th). The *Bradford Dyeing* decision was reversed by this Court, No. 588, last Term, decided May 20, 1940. The *Fansteel* and *Cupples* cases are plainly inapposite. The loss of majority in the *Fansteel* case was indisputably brought about by reasons other than the unfair labor practices and the *Cupples* case presents no question of loss of majority whatever. The *Hamilton-Brown* decision has been overruled in principle by, or is at least of doubtful authority in view of, the later decision of the same circuit in *Bussmann Mfg. Co. v. National Labor Relations Board*, 111 F. (2d) 788.

the deciding court, turned upon its particular facts.<sup>11</sup>

4. Petitioner challenges the bargaining order on the further ground (Pet. 34-39) that it requires petitioner to bargain with Oil Workers International Union, whereas petitioner's refusals to bargain were with International Association of Oil Field, Gas Well and Refinery Workers of America. The Board found, however, that except for the change in name, Oil Workers International Union is the same organization as International Association of Oil Field, Gas Well and Refinery Workers of America (R. 41, 43). The court below concurred in this finding (R. 1652-1653). The question of fact as to the identity of the organizations having been resolved against petitioner both by the Board and by the court below, no question worthy of review by this Court is presented. Further, the

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<sup>11</sup> E. g., in the *National Licorice* case, the union's representation of the men at the time of the refusal to bargain was termed "tentative" by the court, which pointed out that the employees' selection had been expressed only in applications for membership which had not been acted upon by the union, that an unsuccessful strike had thereafter occurred, and that the union's membership was not shown to have become any more definite at any time. And in the *American Manufacturing* case the court's action was predicated in part upon a stipulation at the hearing that a majority of the employees, if called as witnesses, would testify that they no longer wanted to be represented by the union with which the employer refused to bargain.



evidence affords full support for the challenged finding.<sup>12</sup>

<sup>12</sup> The name of the organization was changed to Oil Workers International Union at the eighth annual convention of International Association of Oil Field, Gas Well and Refinery Workers of America held in June 1937 (R. 1543, 1547). The organization retained the same central offices and the same president and other officers, and continued to use stationery and letterheads bearing the old name until the supply was exhausted (R. 677-678, 686). The amendments to the constitution which were enacted at the convention effected no material alterations (R. 1549-1551, 1551-1553); contrary to petitioner's unsupported assertions (Pet. 9, 36) that there was a change from "craft" organization to "industrial" organization, both the original and the amended constitution expressly provide for "industrial" organization (R. 1550, 1551-1552).

Nor is there merit in petitioner's contention that the change of affiliation from A. F. of L. to C. I. O. effected a change in the identity of the organization. The very concept "affiliation" implies that that which "affiliates" does not become identical with that which is "affiliated with" but retains its individual character and identity. (See definition of "affiliate" in *New Standard Dictionary of the English Language*, Funk & Wagnalls Co. (1937)). Particularly is this so in the case of the American Federation of Labor which is "a voluntary national federation of *autonomous unions*." (Lorwin, *The American Federation of Labor*, Brookings Institution, Wash., D. C., 1933, pp. 301, 336-337; italics added.)

Numerous decisions hold that even the identity of a local union is not lost by a change in affiliation with a parent body. See *Shipwrights, Joiners & Calkers' Assn. v. Mitchell*, 60 Wash. 529, 111 Pac. 780; *World Trading Corp. v. Kolchin*, 166 Misc. 854, 2 N. Y. S. (2d) 195 (N. Y. Sup. Ct.); *Laborite v. Cannery Workers', etc., Union*, 197 Wash. 543, 86 P. (2d) 189; *of, Busbin v. Oliver Lodge No. 335, etc.*, 279 N. W. 277; *Kelso v. Cavanagh*, 137 Misc. 653 (N. Y. Sup. Ct.). In contrast, the present case is concerned with the relations between

## CONCLUSION

No question worthy of review is properly presented. The petition for a writ of certiorari should therefore be denied.

Respectfully submitted.

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SEPTEMBER 1940.

independent organizations associated in a federation, each constituent member of which retains autonomy. The conclusion reached in the above cited cases therefore applies *a fortiori* to such action on the part of an autonomous national union, while a contrary conclusion as to a local union, suggested in some of the cases cited by petitioner, would not necessarily be inconsistent with the determinations of the Board here.

## APPENDIX

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449; 29 U. S. C., Secs. 157, 158, 159, 160) are as follows:

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it. \* \* \*

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization \* \* \*

\* \* \*  
(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes,



shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

\* \* \* \* \*

SEC. 10: \* \* \*

(c) \* \* \* If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. \* \* \*

\* \* \* \* \*

(e) \* \* \* No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. \* \* \*

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# In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 413

CONTINENTAL OIL COMPANY, A CORPORATION,  
PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED  
STATES CIRCUIT COURT OF APPEALS FOR THE TENTH  
CIRCUIT

## SUPPLEMENTAL MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD

In its petition for certiorari petitioner urged that the provisions of the Board's order requiring reinstatement of Jones and Moore with back pay were improper because, petitioner asserted, Jones and Moore had both lost their status as employees by obtaining other regular and substantially equivalent employment (Pet. 12, 19-27). In reply to this contention in the brief for the Board in opposition, it was stated, among other things, that (Br. in Opp., p. 7):

This contention was not urged before the Board, although petitioner filed voluminous

exceptions (R. 152-180) to the examiner's intermediate report, which recommended reinstatement with back pay (R. 151). Hence the contention was not properly before the court below. \* \* \*

Petitioner's counsel have by letter called to our attention that petitioner did argue the point in its brief before the Board in support of its exceptions to the examiner's intermediate report. The argument in question was made at pages 144-146 of a 285-page brief, and was inadvertently overlooked in the preparation of the Board's brief in opposition. However, petitioner did not preserve the contention in its exceptions to the examiner's intermediate report, and the Board's Rules and Regulations then in effect (Series 1, as amended, effective April 27, 1936, Article II, Sec. 35), provided that "No matter not included in a statement of exceptions may thereafter be objected to before the Board, \* \* \*." Presumably the omission of any recognition of the contention in question in the Board's decision is attributable to this failure of petitioner to comply with the rules.

In their letter petitioner's counsel also urge that they raised the question in their exceptions to the intermediate report (exceptions 97, 98, 106, and 107, set out at R. 170, 171, 172), and also at the hearing, in objecting to the admission of certain evidence (R. 958 et seq.) Examination of the record references cited fails, however, to reveal any suggestion of the contention in question.



Other objections urged in the brief in opposition against review of the contention are, of course, unaffected by this issue as to whether the contention was raised before the Board.

Respectfully submitted.

FRANCIS BIDDLE,  
*Solicitor General.*

ROBERT B. WATTS,

*Associate General Counsel,  
National Labor Relations Board.*

OCTOBER 1940.

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**In the Supreme Court of the United States**

**OCTOBER TERM, 1940**

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**No. 413**

**CONTINENTAL OIL COMPANY, A CORPORATION,  
PETITIONER**

**v.**

**NATIONAL LABOR RELATIONS BOARD**

---

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIR-  
CUIT COURT OF APPEALS FOR THE TENTH CIRCUIT**

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**BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD**

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**OPINIONS BELOW**

The opinion of the court below (R. 496-515) is reported in 113 F. (2d) 473. The findings of fact, conclusions of law, order, and direction of election of the National Labor Relations Board (R. 27-73) are reported in 12 N. L. R. B. 789.

**JURISDICTION**

The judgment of the court below (R. 538-541) was entered on August 19, 1940. A petition for rehearing (R. 516-537) was denied on July 31, 1940 (R. 537). The petition for a writ of certiorari

was filed on September 9, 1940, and was granted on October 28, 1940, limited to the first and second of the eight questions presented by the petition. The jurisdiction of this Court rests upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and upon Section 10 (e) and (f) of the National Labor Relations Act.

#### QUESTIONS PRESENTED

The questions as to which the petition for a writ of certiorari was granted, as set forth in the petition, are as follows:

"1. Where an employee (Ernest Jones) is ordered transferred from one place of employment to another place of employment in violation of the National Labor Relations Act and refuses to accept such transfer and quits his employment, does the National Labor Relations Board have the power to order such employee's reinstatement to his former position where it appears that immediately after the cessation of his employment he purchased, and, at all times since has operated, a general merchandise store as proprietor thereof in addition to acting as United States postmaster? If such power in the Board exists, is it an abuse of discretion to order such reinstatement?"

"2. Where an employee (F. D. Moore) is ordered transferred from one place of employment to another place of employment in violation of the National Labor Relations Act and refuses such

transfer on account of the alleged illness of his wife, and the employer, after verifying such illness, within a day or two after the transfer order offers the employee reinstatement to his old position "for the duration of his wife's illness," which offer the employee refuses and thereupon quits his employment from which he was receiving a wage of \$112.50 per month (without room and board) and accepts and retains employment at the Wyoming State Penitentiary at a wage of \$70 per month, plus room and board, and it appears that at all times up to the hearing before the Trial Examiner of the Labor Board the wife's illness continued, does the Board have the power to order such employee's reinstatement, or, if such power exists, is it an abuse of discretion to order such reinstatement?"

#### STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act are set forth in the Appendix to the Board's brief in the *Phelps Dodge* cases, Nos. 387 and 641, to be argued herewith.

#### STATEMENT

Upon the usual proceedings, the Board, on May 9, 1939, issued its findings of fact, conclusions of law, order, and direction of election (R. 27-73). Those findings which are pertinent to the



issues before this Court<sup>1</sup> may be briefly summarized as follows:<sup>2</sup>

In April 1936 petitioner, an oil company, discriminatorily transferred two of its employees, Ernest Jones and F. D. Moore, from its Big Muddy field in Wyoming, to its Hobbs, New Mexico, field, because of their membership and activities in the International Association of Oil Field, Gas Well and Refinery Workers of America, a labor organization herein called the Union (R. 43-49).

Jones refused to accept the transfer, and reported for work at Big Muddy, but was informed by his superiors that there was no work for him and that he had "quit" (R. 44; 190, 209-212, 233, 245, 321, 346, 491).<sup>3</sup>

<sup>1</sup> Before the Board and in the court below the case involved numerous questions which either were not raised in the petition for certiorari or which this Court excluded from its consideration by limiting the writ to the first two questions therein presented.

<sup>2</sup> In the following statement, the references preceding the semicolons are to the Board's findings and the succeeding references are to the supporting evidence.

<sup>3</sup> The record plainly shows Jones was discharged. He was told he was "through" (R. 210, 212, 245), asked to vacate his company house (R. 210), and given a "Termination Check" (R. 214-215, 245). Petitioner's records contain an entry approving Jones' "termination allowance" and stating "services no longer required" (R. 491). At the hearing petitioner's general superintendent testified that Jones was informed he had to accept the transfer "if he wanted to continue his employment" (R. 321).

Moore likewise refused the transfer and pointed out that his wife was bedridden; thereupon he was offered a transfer to another field of petitioner in Colorado which he likewise refused; petitioner thereupon offered to retain him at Big Muddy for the duration of his wife's illness, but Moore declined to return on this temporary basis (R. 44-45; 186-187, 276-278, 285, 317-318, 485-486).<sup>4</sup>

Upon these findings, the Board concluded that petitioner had discriminated against Jones and Moore in violation of Section 8 (3) and (1) of the Act (R. 49), and ordered that they be reinstated (R. 72).

On May 25, 1939, petitioner filed in the court below a petition to review and set aside the Board's order (R. 1-19). The Board answered, requesting enforcement of its order (R. 19-26). On June 13, 1940, the court handed down its opinion and entered a short form judgment enforcing the Board's order (R. 496-516). A petition for rehearing filed by petitioner (R. 516-537) was denied on July 31, 1940 (R. 537). On August 19, 1940, the court, reciting that its previous judgment appeared to be insufficient, vacated that judgment

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<sup>4</sup> The evidence clearly shows that Moore, like Jones, was discharged. Moore received a "Termination Check" (R. 271) and, at petitioner's request, vacated his company house (R. 270, 273). Petitioner's records contain an entry approving Moore's "termination allowance" and stating "services no longer required" (R. 492).

and entered a long form judgment to the same effect (R. 538-541).

On October 28, 1940, this Court granted a writ of certiorari limited to the first and second questions presented by the petition for certiorari (R. 542).

#### SUMMARY OF ARGUMENT

##### I

The order requiring the reinstatement of Jones and Moore is valid, whether or not they retained their status as employees, as an exercise of the Board's power to require "such affirmative action \* \* \* as will effectuate the policies of this Act." Power to direct this appropriate relief has not been denied to the Board by the inclusion in Section 10 (c) of the phrase "including reinstatement of employees with or without back pay." In the present case the reinstatement of the two union leaders will effectuate the Act's policies by dissipating the coercive effects of their elimination upon the employees' self-organization.

##### II

If the Board is limited to the "reinstatement of employees," the validity of the order as to Jones turns upon the meaning of "employees" in Section 10 (c). If, as we contend, the term refers to members of the working class generally, it does not include Jones, who became an entrepreneur prior to the Board's order, and the order falls as to him.



But if "employees" in Section 10 (c) refers to employees of the particular employer as defined in the latter part of Section 2 (3), the order is valid as to Jones: the "employee" status of men whose work ceases as a result of unfair labor practices is expressly continued until they obtain "regular and substantially equivalent employment." It is not contended that Jones obtained such employment.

### III

If the Board is limited to the "reinstatement of employees," the order is nevertheless valid as to Moore. If "employees" is used in its generic sense, the order is plainly within the Board's power. And even if "employees" refers to employees of the particular employer as defined in the latter part of Section 2 (3), there is no ground for a contention that Moore obtained "regular and substantially equivalent employment" subsequent to the discrimination against him. There is neither proof nor findings to that effect and petitioner did not raise such a contention at the hearing or adduce any evidence to support it.

Petitioner is not on firm ground in contending that even if the employer makes no claim that the "substantially equivalent employment" exception applies to the particular worker involved, the Board must nevertheless introduce evidence and make findings on the point. If successful, the con-

tention would place a difficult and wasteful burden upon the Board without adequate cause.

If a finding concerning equivalent employment is mandatory in every case, however, it does not follow that the Board's order should be set aside as to Moore. The evidence plainly does not support petitioner's apparent contention that only a finding that Moore's subsequent employment was equivalent could validly be made. Indeed, it affirmatively appears that that employment was so different in important respects from Moore's position with petitioner, that a finding of equivalence could not be made. For this reason, even if the Court determines that a remand would otherwise be necessary for the making of a finding, a remand would be idle in the circumstances of this case.

#### ARGUMENT

*Introductory.*—Petitioner's assignment as error and argument of matters which are relevant only to questions as to which the writ was denied (Pet. Br. 13; Pet. for Cert. 11-12; R. 542) are plainly improper. Similarly, the contention (Pet. Br. 14-15, 23) that the portions of the decree under review must be reversed because of an asserted variance between the complaint and the Board's findings, was not advanced in the petition and may not now be urged.\*

\* The claim of variance is inconsistent with the statement in the petition (p. 3) that "the charge and finding of the Board were that in April 1936, the Petitioner had dis-

The statement in each of the questions presented that the employee concerned "quit his employment" is contrary to the Board's findings, which the Circuit Court of Appeals confirmed (R. 513). The Board found (R. 44), and the finding is amply supported (*supra*, p. 4), that Jones persisted in his attempts to work at the job from which petitioner discriminatorily transferred him, but that petitioner would not permit him to work. As to Moore, the Board held that "whenever any substantial change in the status of an employee is made upon a discriminatory basis, the refusal of the employee to accept the changed status cannot be considered as a resignation from employment. \* \* \* Accordingly the refusal of this offer by Moore did not operate as a voluntary termination of employment" (R. 48; see p. 5, *supra*).<sup>9</sup>

charged Jones and Moore for union reasons, in violation of the Act." In any event, the contention clearly lacks merit. Petitioner fully litigated the issue of discriminatory transfer and does not claim that it was in any way misled or prejudiced. *National Labor Relations Board v. Mackay Radio & Telegraph Co.*, 304 U. S. 333, 349-350; *National Labor Relations Board v. Express Publishing Co.*, No. 442, this Term, decided March 3, 1941.

<sup>9</sup> The Board cited in support of its position *Matter of Clover Fork Coal Co.*, 4 N. L. R. B. 202, enf'd, *Clover Fork Coal Co. v. National Labor Relations Board*, 97 F. (2d) 331 (C. C. A. 6), where union men ceased work as a result of their refusal to accept discriminatory assignments to work in dangerous sections of the mine or sections so rocky that their earnings would be extremely small (4 N. L. R. B. at 221-222, 225, 226, 227). The Board also cited *Matter of Waggoner Refining Co.*, 6 N. L. R. B. 731, 753-757, consent



Our argument will be confined to a consideration whether the Board could validly require the reinstatement of Jones and Moore to remedy petitioner's discrimination against them. The extent of the Board's power to order reinstatement, and various possible constructions of the Act relative to that issue, are fully discussed in the Board's brief in the *Phelps Dodge* cases, Nos. 387 and 641, to be argued herewith, at pp 38-54. We respectfully refer the Court to that brief, and shall here

decree entered January 4, 1939 (C. C. A. 5), where two employees were discharged upon refusal to accept discriminatory demotions. Compare *National Labor Relations Board v. American Potash & Chemical Co.*, 98 F. (2d) 488, 493 (C. C. A. 9), certiorari denied, 306 U. S. 643, enforcing an order of the Board requiring reinstatement with back pay of an employee who resigned because of discriminatory working conditions. On induced resignation as a constructive discharge, see also *Matter of R. C. Hoiles et al.*, 13 N. L. R. B. 1122; *Matter of Ingram Mfg. Co.*, 5 N. L. R. B. 908, 917-918; *Matter of Harlan Fuel Co.*, 8 N. L. R. B. 25, 41, 52-59; *Matter of Pulaski Veneer Corp.*, 10 N. L. R. B. 136, 152-154; *Matter of Sterling Corset Co., Inc.*, 9 N. L. R. B. 858, 866-868. The House Committee mentioned "demotion or transfer" and "forced resignation" as forms which violations of Section 8 (3) might take. H. Rept. 1147, 74th Cong., 1st Sess., p. 19 (quoted at pages 20-21 of our brief in the *Phelps Dodge* cases). The Board's reasoning concerning an employee's refusal to accept a substantial discrimination in working conditions is likewise in accord with the common law doctrine of forced abandonment of employment. Cf. *Murphy v. Williamson*, 180 Ia. 291, 163 N. W. 211; *Langguth v. Burmeister*, 101 Minn. 14, 111 N. W. 653; *Erickson v. Sorby*, 90 Minn. 327, 96 N. W. 791; *Bishop v. Ranney*, 59 Vt. 316, 7 Atl. 820; *Sigmon v. Goldstone*, 101 N. Y. Supp. 984.

discuss only the application to the facts of this case of the various arguments advanced therein.

# I

THE BOARD HAS THE POWER TO DIRECT AFFIRMATIVE RELIEF WHICH WILL EFFECTUATE THE POLICIES OF THE ACT. THE REINSTATEMENT ORDER HERE WILL EFFECTUATE THOSE POLICIES

Section 10 (c) of the Act empowers the Board to direct an employer found to have committed unfair labor practices to cease and desist from the practices found and

to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act.

In the *Phelps Dodge* brief, pp. 38-44, we argue that the power of the Board under this provision extends to any type of affirmative relief which it may validly find will effectuate the policies of the Act in the circumstances of the case at hand. We particularly contend (pp. 40-44) that the phrase "including reinstatement of employees with or without back pay" in Section 10 (c) is but illustrative of the Board's power to direct affirmative action, and that it does not operate as a qualification upon the Board's power to remedy discrimination "in regard to hire or tenure of employment" in violation of Section 8 (3). If that argument be accepted, it eliminates any further question as to the validity of the reinstatement order in the pres-

ent case, with respect both to Jones and Moore, except the question whether the Board could properly find that their reinstatement would, in the circumstances of the present case, effectuate the policies of the Act. If, on the other hand, that argument be rejected, there remain questions, likewise discussed in the *Phelps Dodge* brief, as to what persons enjoy the status of "employees" as that term is used in Section 10 (c). Whether Jones and Moore possess that status, and other related questions, are discussed *infra*, pages 14-22. Here we assume the correctness of the proposition that the Board has power to direct any affirmative relief which will effectuate the policies of the Act, and turn to the question whether the Board could properly find that the reinstatement of Jones and Moore would effectuate those policies.

Reinstatement is, of course, the normal affirmative remedy for illegal deprivation of employment. Any contention that it would not effectuate the policies of the Act in this case must rest, as to Jones, on his transformation from wage earner to shopkeeper, and, as to Moore, on his having obtained other substantially equivalent employment within Section 2 (3).

We argue generally in the *Phelps Dodge* brief, pp. 51-54, that the acquisition of equivalent employment by a discriminatorily excluded worker does not in itself remove the basis upon which the



Board may reasonably conclude that his reinstatement is appropriate to effectuate the purposes of the Act. That argument is equally applicable to transfer from the ranks of the workers to those of the entrepreneurs.

Further, the present case aptly illustrates the point made in the *Phelps Dodge* brief, p. 53, that under the construction of the Act urged by the employers they may thwart self-organization in a plant by eliminating the union leaders, in the hope that necessity will compel the victims to secure other employment which will bar their reinstatement. Jones and Moore were both long-time officers of the Union, were two of three members of the "Workmen's Committee" which conducted the Union's negotiations with petitioner, and were the most militant members of the Union (R. 46-47; 171, 183, 185, 192, 193, 194, 198-199, 241, 267-268, 355). Unquestionably their elimination by petitioner, whether by discharge, transfer, or forced resignation, dealt a staggering blow to the self-organization of petitioner's employees (cf. R. 185, 241), the effects of which should be eradicated, the Board might properly find, by the reinstatement of the two men. To the appropriateness of such a remedy to effectuate the Act an inquiry whether the men have obtained other employment or have left the "employee" class plainly has little relevance.

## II

IF THE BOARD MAY REINSTATE ONLY "EMPLOYEES" THE  
VALIDITY OF THE ORDER AS TO JONES TURNS ON THE  
MEANING OF "EMPLOYEES"

If the argument which we have just made is rejected, and it is held that under Section 10 (c) the Board's power to direct affirmative action to remedy violations of Section 8 (3) is limited to reinstatement of "employees," the validity of the reinstatement order as to Jones depends upon what construction is placed upon the word "employees" in Section 10 (c). The interpretation of that term is fully discussed in the *Phelps Dodge* brief, pp. 45-49. We there argue that except for purposes of Sections 8 (5) and 9 (a) (the collective bargaining provisions) the term "employees" is used throughout the statute, including Section 10 (c), in its generic sense, as meaning members of the working class generally.

If this contention is accepted, and it is at the same time held that the Board may reinstate only "employees," it follows that the reinstatement order may not be sustained as to Jones. For it is true, as petitioner urges, that Jones is no longer an employee of anyone, or in the employee class. Hence if membership in that class is a prerequisite to reinstatement the order must fall as to him.

On the other hand, if this construction of "employees" be rejected, and it is held that the latter part of the definition of "employee" in Section

2 (3) controls, the order should be sustained as to Jones. The latter part of Section 2 (3) provides that "employee" "shall include any individual whose work has ceased as a consequence of, or in connection with any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment \* \* \*". Jones ceased work as a result of an unfair labor practice, and petitioner does not urge that Jones has obtained substantially equivalent employment; rather it asserts (Br. 19) that he is not "an employee of anyone." Under the quoted provision of Section 2 (3), therefore, Jones retains the status of an employee of petitioner, and if that provision is controlling for purposes of Section 10 (c), Jones is squarely within "reinstatement of employees." Cf. *National Labor Relations Board v. Mackay Radio & Telegraph Co.*, 304 U. S. 333, 347.

### III

#### THE ORDER IS VALID AS TO MOORE

Even if the restrictive interpretation of Section 10 (c) is adopted, so that the order is valid only as an exercise of the power expressly granted the Board in Section 10 (c) to require the "reinstatement of employees," the order is nevertheless valid as to Moore.

If "employees" is used in Section 10 (c) in its generic sense it plainly may not be contended that



by virtue of his asserted obtainment of substantially equivalent employment, Moore ceased to be an "employee." Section 2 (3) provides that "the term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer \* \* \*." As we have argued in the *Phelps Dodge* brief (pp. 45-48), the obtainment of equivalent employment is relevant only to the status of the worker as an employee of a particular employer for purposes of the operation of Sections 8 (5) and 9 of the Act.

In the event that this argument is rejected and it is determined that "employees" in Section 10 (c) refers only to those who satisfy the latter part of Section 2 (3), that is "any individual whose work has ceased as a consequence of, or in connection with any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment," it is apparent that Moore is not excluded by reason of the last qualification. There is neither proof nor findings that Moore obtained such employment. Petitioner did not raise the point of substantially equivalent employment at the hearing before the Board's trial examiner and the facts as to Moore's subsequent employment were adduced in the course of inquiry as to his subsequent earnings for the purpose of computing deductions from the amount of back pay he is to receive (R. 273-274, 301, 303-304). There was no

occasion, in the absence of a contention by petitioner, either expressly advanced or implied in the questioning of witnesses, for the Board's attorney to inquire as to facts bearing upon the equivalence of the new employment to the old.'

Nor was there any occasion for a finding by the Board upon whether Moore's employment at the penitentiary was or was not "regular and substantially equivalent" to the job from which petitioner discriminatorily excluded him. Petitioner's assertion (Pet. Br. 25-26) that whether or not it raised and litigated the point, a finding concerning it was prerequisite to a reinstatement order, is not supported by the Act or any decision under it. The cases cited by petitioner (Pet. Br. 17-18) are beside the point. In *Mooreville Cotton Mills v. National Labor Relations Board*, 94 F. (2d) 61 (C. C. A. 4), 97 F. (2d) 959, 110 F. (2d) 179, and *National Labor Relations Board v. Carlisle Lumber Co.*, 99 F. (2d) 533 (C. C. A. 9), certiorari denied, 306 U. S. 646, the obtaining of equivalent employment was raised before the Board as a ground for denying the usual reinstatement remedy, evidence was adduced relevant to that question, the Board found that the employees in

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<sup>1</sup> As we stated in our Supplemental Memorandum in opposition to the petition for certiorari, the equivalent employment contention was first raised in petitioner's brief before the Board, submitted long after the hearing, and was not preserved as required by the Board's Rules and Regulations.

question did not obtain such employment, and the court enforced the order. In *National Labor Relations Board v. Botany Worsted Mills, Inc.*, 106 F. (2d) 263 (C. C. A. 3), the Board made a specific finding on the contention raised by the employer, and the court remanded the case to the Board for further evidence on the point. In each of these cases the court's opinion had reference to a substantive requirement where the issue of substantially equivalent employment was raised; in neither did the court evidence any intent to prescribe a procedural prerequisite for every reinstatement order. Neither *Standard Lime & Stone Co. v. National Labor Relations Board*, 97 F. (2d) 531 (C. C. A. 4), nor *National Labor Relations Board v. Hearst*, 102 F. (2d) 658 (C. C. A. 9), involved any question concerning the effect of equivalent employment upon a reinstatement order. And in *National Labor Relations Board v. National Motor Bearing Co.*, 105 F. (2d) 652, 662 (C. C. A. 9), the court squarely rejected the contention made here by petitioner, holding that a finding as to the equivalence of subsequent employment "though helpful to the court is not essential to the validity of the order." See also *Bussmann Mfg. Co. v. National Labor Relations Board*, 111 F. (2d) 783, 787 (C. C. A. 8).

It would seem clear that in seeking to avoid the normal reinstatement remedy on the ground that the person whose reinstatement is sought no longer satisfies the requirement that he be one "who has



not obtained any other regular and substantially equivalent employment," the employer must be relying upon a statutory exception which he must claim and the applicability of which he must prove. Cf: *Schlemmer v. Buffalo etc. R. Co.*, 205 U. S. 1, 10; *Javierre v. Central Altagracia*, 217 U. S. 502, 508; *McKelvey v. United States*, 260 U. S. 353; 357; *Hill v. Smith*, 260 U. S. 592, 595. Any other construction would require the Board in every case to introduce evidence and make findings concerning the equivalence of every employment of each person as to whom reinstatement might be ordered, even though some or all of the employments might be so plainly nonequivalent that the employer would not base any claim upon them. The Act contains no suggestion of an intent on the part of Congress to place upon the Board a time-consuming and purposeless burden of this nature. The Board, in the exercise of its discretion concerning the conduct of its proceedings, should be free to omit inquiry into the equivalence of subsequent employments unless the employer raises and litigates the issue.\*

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\* If our contention is rejected and it is held that a determination that no equivalent employment was obtained is a condition precedent to the order of reinstatement, the date as of which the determination should be made becomes important. Neither Section 10 (c) nor Section 2 (3) specifies the time as of which employee status is to be determined for the remedial purposes of the statute. We submit that the proper time is the date of the Board's hearing, rather than of the Board's order or of the court's decree.

If the Court holds, however, that a finding concerning substantially equivalent employment is mandatory whether or not the employer has made any contention with respect thereto or adduced proof to support it, the most the Company could properly ask is that the case be remanded to the Board for the making of a finding upon the present record, or upon further evidence, if the Board deems such evidence necessary or desirable. Petitioner appears, however, to seek to have the matter finally disposed of here by contending that upon the record the Board could only find that Moore did obtain substantially equivalent employment (Br. 25-26). This claim is plainly erroneous: indeed we think that Moore's reinstatement should be upheld without remand because it is entirely clear that the Board would necessarily find that Moore's subsequent employment was not equivalent.

The Board found (R. 49) and the evidence establishes that Moore was earning \$112.50 a month at the time his services as a roustabout terminated (R. 280, 474, 480, 492), that the rate of pay for his job as roustabout was thereafter increased to \$125

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The two dates last mentioned would necessitate constant remands upon the question of equivalent employment, so that far from being "workable" (*National Labor Relations Board v. Remington Rand, Inc.*, 94 F. (2d) 862, 870 (C. C. A. 2), certiorari denied, 304 U. S. 576), the Act would be a veritable "merry-go-round" (*International Association of Machinists v. National Labor Relations Board*, 110 F. (2d) 29, 33 (App. D. C.), affirmed, 311 U. S. 72).

and subsequently to \$135 a month (R. 298-299), and that shortly after his discharge he obtained a position as guard at the State penitentiary at Rawlins, Wyoming, at a salary of \$70 a month with room and board, which has been his only income (R. 263, 271, 274, 280). The substantial difference between Moore's pay at the penitentiary and what he would have earned working for petitioner, the difference in the type of work, the change in geographical location, the loss of Moore's place as second in seniority in petitioner's plant (R. 267, 342), and, finally, the inference from Moore's desire to resume work for petitioner (R. 273) that the job as penitentiary guard was inferior to his employment with petitioner, are all factors which the Board has weighed in determining the non-equivalence of subsequent employment and which the courts have agreed are relevant.<sup>9</sup>

<sup>9</sup> *Mooreville Cotton Mills v. National Labor Relations Board*, 110 F. (2d) 179, 180-184 (C. C. A. 4); *Subin v. National Labor Relations Board*, 112 F. (2d) 326, 331 (C. C. A. 3), certiorari denied, No. 280, this Term; *National Labor Relations Board v. Botany Worsted Mills, Inc.*, 106 F. (2d) 263, 269 (C. C. A. 3); *Bussmann Mfg. Co. v. National Labor Relations Board*, 111 F. (2d) 783, 787 (C. C. A. 8); *National Labor Relations Board v. Carlisle Lumber Co.*, 99 F. (2d) 533, 536, 539 (C. C. A. 9), certiorari denied, 306 U. S. 646; *Ransome Concrete Machinery Co. v. Moody*, 282 Fed. 29, 36 (C. C. A. 2). Moore's pay as a guard must be compared with the pay of \$135 he would have received as a roustabout, not with the lower rate of pay he was receiving at the time of the discrimination. The *Mooreville Cotton* case, *supra*, 110 F. (2d) at 182; cf. *National Labor Relations Board v. Remington Rand, Inc.*, 94 F. (2d) 862, 872 (C. C. A. 2), certiorari denied, 304 U. S. 576.



## CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment of the court below, insofar as it is here on review, should be affirmed.

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MARCH 1941.

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# SUPREME COURT OF THE UNITED STATES.

No. 413.—OCTOBER TERM, 1940.

Continental Oil Company, Petitioner,	}	On Writ of Certiorari to the United States Circuit Court of Appeals for the Tenth Circuit.
vs.		
National Labor Relations Board.		

[April 28, 1941.]

Mr. Justice FRANKFURTER delivered the opinion of the Court.

In its petition the Continental Oil Company challenged various provisions of an order of the Labor Board which the Circuit Court of Appeals had enforced, but we brought here only so much of the case as pertained to the reinstatement of two men, Jones and Moore. 311 U. S. —. Continental's contention is that reinstatement was precluded because neither man remained an "employee" within § 2(3) of the National Labor Relations Act. The decisive question, however, as we have ruled in the *Phelps Dodge* case, decided this day, is whether reinstatement will "effectuate the policies" of the Act. We therefore remand the case for an exercise by the Board of its judgment on that issue, in light of our opinion in the *Phelps Dodge* case.

*So ordered.*

Mr. Justice ROBERTS took no part in the consideration or disposition of this case.

The CHIEF Justice and Mr. Justice STONE reiterate the views expressed by them in the *Phelps Dodge* case.

Mr. Justice BLACK, Mr. Justice DOUGLAS and Mr. Justice MURPHY are of opinion that the Board's order should be affirmed for the reasons set forth by them in the *Phelps Dodge* case.

